

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL., :
 :
PLAINTIFFS, :
vs. : DOCKET NUMBER
 : 1:17-CV-2989-AT
BRAD RAFFENSPERGER, ET AL., :
 :
DEFENDANTS. :

TRANSCRIPT OF HEARING ON PRELIMINARY INJUNCTION VIA ZOOM

PROCEEDINGS

BEFORE THE HONORABLE AMY TOTENBERG

UNITED STATES DISTRICT JUDGE

SEPTEMBER 14, 2020

9:32 A.M.

VOLUME 3

REDACTED

MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

TRANSCRIPT PRODUCED BY:

OFFICIAL COURT REPORTER: SHANNON R. WELCH, RMR, CRR
2394 UNITED STATES COURTHOUSE
75 TED TURNER DRIVE, SOUTHWEST
ATLANTA, GEORGIA 30303
(404) 215-1383

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

A P P E A R A N C E S O F C O U N S E L

**FOR THE PLAINTIFFS DONNA CURLING, DONNA PRICE, JEFFREY
SCHOENBERG:**

DAVID D. CROSS
VERONICA ASCARRUNZ
EILEEN BROGAN
MORRISON & FOERSTER, LLP

HALSEY G. KNAPP, JR.
ADAM M. SPARKS
KREVOLIN & HORST, LLC

**FOR THE PLAINTIFFS COALITION FOR GOOD GOVERNANCE, LAURA DIGGES,
WILLIAM DIGGES, III, AND RICARDO DAVIS:**

BRUCE BROWN
BRUCE P. BROWN LAW

ROBERT ALEXANDER McGUIRE, III (VIA VIDEO CONFERENCE)
ROBERT McGUIRE LAW FIRM

FOR THE STATE OF GEORGIA DEFENDANTS:

VINCENT ROBERT RUSSO, JR.
CAREY A. MILLER
ROBBINS ROSS ALLOY BELINFANTE LITTLEFIELD, LLC

BRYAN P. TYSON
BRYAN JACATOUT
DIANE LAROSS
LOREE ANNE PARADISE
TAYLOR ENGLISH DUMA

(...cont'd...)

1 (...cont'd....)

2 **FOR THE FULTON COUNTY DEFENDANTS:**

3 CHERYL RINGER
4 KAYE BURWELL
5 OFFICE OF THE FULTON COUNTY ATTORNEY
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I N D E X T O P R O C E E D I N G S

WITNESS

PAGE

J. ALEX HALDERMAN, Ph.D.

Direct Examination (Continued)	
By Ms. Ascarrunz	22
Cross-Examination	
By Mr. Tyson	50
Examination	
By The Court	77

KEVIN SKOGLUND

Direct Examination (Continued)	
By Mr. McGuire	84
Cross-Examination	
By Mr. Tyson	92
Direct Examination (Continued)	
By Mr. McGuire	100
Cross-Examination	
By Mr. Tyson	123
Examination	
By The Court	127
Redirect Examination	
By Mr. McGuire	133
Recross-Examination	
By Mr. Tyson	134

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CLOSING ARGUMENT

by Mr. McGuire	136
by Mr. Tyson	147
by Mr. Cross	171

CERTIFICATE	199
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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; September 14, 2020.)

(The following proceedings were held in a
private Zoom call with only authorized
participants, as follows:)

THE COURT:

MR. CROSS:

THE COURT:

MR. BROWN:

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THE COURT:

MR. BROWN:

THE COURT:

MR. CROSS:

THE COURT:

MR. MILLER:

THE COURT:

MR. CROSS:

THE COURT:

MR. TYSON:

THE COURT:

MR. MILLER:

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THE COURT:

MR. TYSON:

THE COURT:

MR. TYSON:

THE COURT:

MR. JACOUTOT:

THE COURT:

MR. SPARKS:

THE COURT:

MR. TYSON:

THE COURT:

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[REDACTED]

[REDACTED]

MR. MAGUIRE: [REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. CROSS: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

MR. CROSS: [REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. TYSON: [REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

[REDACTED]

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MR. TYSON: [REDACTED]

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MR. MCGUIRE: [REDACTED]
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MR. TYSON:

MR. CROSS:

MR. TYSON:

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THE COURT:

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THE COURT:

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MR. TYSON: [REDACTED]
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MR. TYSON:

[REDACTED]

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[REDACTED]

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[REDACTED]

THE COURT:

[REDACTED]

[REDACTED]

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MR. TYSON:

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THE COURT: [REDACTED]

[REDACTED]

DR. COOMER: [REDACTED]

THE COURT: [REDACTED]

DR. COOMER: [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

DR. COOMER: [REDACTED]

THE COURT: [REDACTED]

[REDACTED]

DR. COOMER: [REDACTED]

THE COURT: [REDACTED]

[REDACTED]

DR. COOMER: [REDACTED]

1 THE COURT: [REDACTED]
2 [REDACTED]
3 DR. COOMER: [REDACTED]
4 THE COURT: [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 DR. COOMER: [REDACTED]
8 THE COURT: [REDACTED]
9 [REDACTED]
10 DR. COOMER: [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 THE COURT: [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 DR. COOMER: [REDACTED]
17 THE COURT: [REDACTED]
18 DR. COOMER: [REDACTED]
19 THE COURT: [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 DR. COOMER: [REDACTED]
23 THE COURT: [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 DR. HALDERMAN: [REDACTED]
2 THE COURT: [REDACTED]
3 MR. CROSS: [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 THE COURT: [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 MR. MILLER: [REDACTED]
12 [REDACTED]
13 [REDACTED]
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25 THE COURT: [REDACTED]

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MR. MILLER: [REDACTED]

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THE COURT: [REDACTED]

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MS. ASCARRUNZ: [REDACTED]

THE COURT: [REDACTED]

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BY MS. ASCARRUNZ:

Q. [REDACTED]

A. [REDACTED]

Q. [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

MS. ASCARRUNZ: [REDACTED]

[REDACTED]

[REDACTED]

Q. (BY MS. ASCARRUNZ) [REDACTED]

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A. [REDACTED]

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1 Q. [REDACTED]
2 [REDACTED]
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4 A. [REDACTED]
5 Q. [REDACTED]
6 [REDACTED]
7 A. [REDACTED]
8 Q. [REDACTED]
9 [REDACTED]
10 A. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 Q. [REDACTED]
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16 A. [REDACTED]
17 Q. [REDACTED]
18 [REDACTED]
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20 A. [REDACTED]
21 [REDACTED]
22 Q. [REDACTED]
23 A. [REDACTED]
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Q. [REDACTED]

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A. [REDACTED]

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Q. [REDACTED]

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A. [REDACTED]

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8 Q. [REDACTED]
9 A. [REDACTED]
10 Q. [REDACTED]
11 A. [REDACTED]
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13 [REDACTED]
14 Q. [REDACTED]
15 A. [REDACTED]
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19 Q. [REDACTED]
20 A. [REDACTED]
21 [REDACTED]
22 [REDACTED]
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24 [REDACTED]
25 Q. [REDACTED]

1 **A.** [REDACTED]
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5 **Q.** [REDACTED]
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7 **A.** [REDACTED]
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14 [REDACTED]
15 **Q.** [REDACTED]
16 MS. ASCARRUNZ: [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 MR. TYSON: [REDACTED]
21 [REDACTED]
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THE COURT:

Q. (BY MS. ASCARRUNZ)

A.

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A. [REDACTED]

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Q. [REDACTED]

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A. [REDACTED]

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THE COURT: [REDACTED]

THE WITNESS: [REDACTED]

THE COURT: [REDACTED]

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THE WITNESS: [REDACTED]

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THE COURT: [REDACTED]

[REDACTED]

A. [REDACTED]

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Q. (BY MS. ASCARRUNZ) [REDACTED]

THE COURT: [REDACTED]

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THE WITNESS: [REDACTED]

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THE COURT:

COURT REPORTER:

THE COURT:

THE WITNESS:

THE COURT:

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THE WITNESS: [REDACTED]

THE COURT: [REDACTED]

THE WITNESS: [REDACTED]

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THE COURT: [REDACTED]

Q. (BY MS. ASCARRUNZ) [REDACTED]

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[REDACTED]

A. [REDACTED]

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Q. [REDACTED]

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Q. [REDACTED]

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A. [REDACTED]

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Q. [REDACTED]

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A. [REDACTED]

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Q. [REDACTED]

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THE COURT:

THE WITNESS:

THE COURT:

THE WITNESS:

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THE COURT: [REDACTED]

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[REDACTED]

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THE WITNESS: [REDACTED]

[REDACTED]

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[REDACTED]

THE COURT: [REDACTED]

Q. (BY MS. ASCARRUNZ) [REDACTED]

[REDACTED]

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A. [REDACTED]

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Q. [REDACTED]

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A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

Q. [REDACTED]

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A. [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

THE COURT:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE WITNESS:

[REDACTED]

[REDACTED]

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Q. (BY MS. ASCARRUNZ)

A.

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[REDACTED]

A. [REDACTED]

Q. [REDACTED]

[REDACTED]

A. [REDACTED]

MS. ASCARRUNZ: [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

[REDACTED]

MS. ASCARRUNZ: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: [REDACTED]

MR. TYSON: [REDACTED]

THE COURT: [REDACTED]

1 MR. TYSON: [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 MS. ASCARRUNZ: [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 MR. TYSON: [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 MS. ASCARRUNZ: [REDACTED]
13 MR. TYSON: [REDACTED]
14 MS. ASCARRUNZ: [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 THE COURT: [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 THE COURT: [REDACTED]
22 [REDACTED]
23 MS. ASCARRUNZ: [REDACTED]
24 [REDACTED]
25 [REDACTED]

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THE COURT:

[REDACTED]

[REDACTED]

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MR. TYSON:

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[REDACTED]

THE COURT:

[REDACTED]

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[REDACTED]

MS. ASCARRUNZ:

[REDACTED]

Q. (BY MS. ASCARRUNZ)

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1 Q. [REDACTED]
2 A. [REDACTED]
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13 [REDACTED]
14 Q. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 A. [REDACTED]
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21 [REDACTED]
22 Q. [REDACTED]
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24 A. [REDACTED]
25 Q. [REDACTED]

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MS. ASCARRUNZ: [REDACTED]

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THE COURT:

MR. TYSON:

THE COURT:

MR. MCGUIRE:

THE COURT:

MR. TYSON:

THE COURT:

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MR. TYSON: [REDACTED]

MR. BROWN: [REDACTED]

THE COURT: [REDACTED]

[REDACTED]

LAW CLERK COLE: [REDACTED]

THE COURT: [REDACTED]

MR. TYSON: [REDACTED]

[REDACTED]

THE COURT: [REDACTED]

[REDACTED]

BY MR. TYSON:

Q. [REDACTED]

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THE COURT: [REDACTED]

[REDACTED]

MR. TYSON: [REDACTED]

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THE WITNESS: [REDACTED]

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MR. TYSON: [REDACTED]

Q. (BY MR. TYSON) [REDACTED]

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MR. TYSON: [REDACTED]

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Q. (BY MR. TYSON) [REDACTED]

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MR. TYSON: [REDACTED]

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Q. (BY MR. TYSON)

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A. [REDACTED]

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1 Q. [REDACTED]
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3 A. [REDACTED]
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6 Q. [REDACTED]
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8 A. [REDACTED]
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11 Q. [REDACTED]
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13 [REDACTED]
14 A. [REDACTED]
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22 Q. [REDACTED]
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24 A. [REDACTED]
25 Q. [REDACTED]

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A. [REDACTED]

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Q. [REDACTED]

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A. [REDACTED]

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MR. TYSON:

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THE COURT:

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MR. TYSON:

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THE COURT:

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MR. TYSON:

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Q. (BY MR. TYSON)

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MR. TYSON:

Q. (BY MR. TYSON)

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MR. TYSON:

Q. (BY MR. TYSON)

THE COURT:

MR. TYSON:

THE COURT:

Q. (BY MR. TYSON)

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A. [REDACTED]
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1 Q. (BY MR. TYSON) [REDACTED]
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12 A. [REDACTED]
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15 Q. [REDACTED]
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17 A. [REDACTED]
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23 A. [REDACTED]
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1 **A.** [REDACTED]
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MS. ASCARRUNZ: [REDACTED]

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MR. MCGUIRE: [REDACTED]

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MR. TYSON: [REDACTED]

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MR. TYSON: [REDACTED]

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DR. COOMER: [REDACTED]

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THE COURT: [REDACTED]

Q. (BY MR. MCGUIRE) [REDACTED]

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LAW CLERK COLE: [REDACTED]
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MR. McGUIRE: [REDACTED]
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MR. MCGUIRE: [REDACTED]

THE COURT: [REDACTED]

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MR. MCGUIRE:

THE WITNESS:

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MR. MCGUIRE: [REDACTED]

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MR. TYSON:

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**(The private Zoom proceedings were thereby
concluded at 12:34 P.M., and the Zoom meeting
open to the public continued, as follows:)**

THE COURT: Is Mr. Skoglund still -- are we going to
continue with his testimony?

MR. McGUIRE: Yes, Your Honor. We do have a few
exhibits for him.

THE COURT: All right. How many more, Ms. Cole, do
you have to admit?

LAW CLERK COLE: I just have four people in the
waiting room right now.

THE COURT: All right. Well, go ahead and admit them
or whatever you are going to do. And then we will begin and
get the exhibits up.

LAW CLERK COLE: Mr. McGuire, what are the pictures
you are going to use?

MR. McGUIRE: It will be PD 20, PD 19, and then

1 potentially -- well, that will be it for Mr. Skoglund.

2 THE COURT: Who is Diabolic Empress? Okay. Thank
3 you. I don't want to have another experience here.

4 I think we have everyone here -- counsel and the
5 witness.

6 And is Mr. Skoglund going to continue his testimony
7 now that is the public portion of his testimony?

8 MR. MCGUIRE: Yes, Your Honor.

9 Mr. Bruce Brown had a motion I believe he wanted to
10 make. I think he is muted.

11 THE COURT: Mr. Brown -- let's see. Ms. Cole, did
12 you de-mute?

13 MR. BROWN: Thank you, Your Honor. Thank you,
14 Ms. Cole.

15 The Coalition plaintiffs at the appropriate time will
16 be filing a motion to unseal the portion of the sealed
17 testimony that is not confidential. We will also be taking the
18 position that the demonstration of Dr. Halderman also should be
19 unsealed. We completely understand the logistical imperatives
20 that Your Honor has been grappling with. And I believe that a
21 motion would be the best vehicle for allowing the parties,
22 including the State, to present the arguments and to be very
23 specific of what portions of the testimony should be unsealed
24 and for Your Honor to consider those in due course.

25 Thank you.

1 THE COURT: That is fine. Thank you.

2 MR. MCGUIRE: Mr. Skoglund, I believe you are muted,
3 and I don't see your video.

4 LAW CLERK COLE: It is taking a moment for --

5 COURT REPORTER: I believe we have some members of
6 the public with video up. If counsel of record could just have
7 video up.

8 THE COURT: I think we're okay. We have pictures
9 but --

10 All right. Great. We have our witness back. Hello,
11 Mr. Skoglund.

12 MR. MCGUIRE: May I proceed?

13 THE COURT: Yes.

14 DIRECT EXAMINATION (Continued)

15 BY MR. MCGUIRE:

16 Q. Mr. Skoglund, I would like to ask you about logic and
17 accuracy.

18 MR. MCGUIRE: And so I would like to ask Holly --

19 THE COURT: Would you just -- for purposes of the
20 public, let's just go ahead and just have the witness identify
21 again.

22 You are still under oath, Mr. Skoglund. Would you
23 just go ahead again and identify yourself, where you are
24 located, and what your -- basically what the scope of your
25 expertise and position are.

1 THE WITNESS: Yes. My name is Kevin Skoglund,
2 S-K-O-G-L-U-N-D. I reside in Wynnewood, Pennsylvania, just
3 outside of Philadelphia, which is where I'm calling from today.
4 I'm testifying as a cybersecurity and electronic voting expert
5 in this case.

6 THE COURT: And what is the nature of your business
7 and background, just as background?

8 THE WITNESS: Yes. My background is diverse. It
9 includes programming, teaching, cybersecurity consulting, and
10 advising on election technology.

11 THE COURT: Thank you.

12 **Q. (BY MR. McGUIRE)** So thank you, Mr. Skoglund.

13 You are familiar with logic and accuracy?

14 **A.** Yes, I am.

15 **Q.** What is the purpose of pre-election logic and accuracy
16 testing?

17 **A.** The purpose of any testing is to try and answer a
18 question, to try and, you know, find out if something is true
19 or not.

20 And so for logic and accuracy testing, different counties
21 perform it different ways, different states perform it
22 different ways depending on what question they want to answer.
23 So it really depends on what the scope of what you want to look
24 at.

25 If you look at a single contest, then you verify that that

1 single contest is working correctly. If you look at a single
2 piece of equipment and test that, then you verify that that
3 single piece of equipment is working correctly. If you test --
4 if you test everything that is on a ballot, then you can test
5 that the ballot is working correctly.

6 **Q.** And do you have a view of what constitutes adequate logic
7 and accuracy of equipment such as a ballot-marking device?

8 MR. TYSON: Your Honor, I'll object here that we
9 haven't admitted Mr. Skoglund as an expert on election
10 administration to have an opinion on what is adequate. I think
11 Mr. McGuire can lay the foundation for that. I don't think it
12 has been laid so far.

13 MR. MCGUIRE: Your Honor, we have already tendered
14 him as an expert in voting -- electronic voting security. And
15 logic and accuracy testing is an inherent part of voting
16 security.

17 We can certainly lay more foundation if the State
18 wants, but I think he is already qualified.

19 THE COURT: All right. Why don't you just briefly do
20 so. I think he is. But go ahead basically to do so.

21 **Q. (BY MR. MCGUIRE)** So, Mr. Skoglund, let's go back. I
22 think some of the ground that we covered yesterday might be
23 informative here.

24 Can you tell the Court more about your experience in
25 regard to voting technology?

1 **A.** So I have advised a number of different groups about their
2 voting technology and the selections that they are making,
3 including states and counties, the City of New York. And I
4 have made -- I have done studies, analysis of the voting
5 purchases that different counties make and comparing the
6 features of those systems.

7 I'm not sure if there is something more specific you want
8 me to go into. It is a long list.

9 THE COURT: And is logic and accuracy a capacity of
10 the systems and how it functions in the logic and accuracy part
11 of that?

12 THE WITNESS: Logic and accuracy -- I think the State
13 is right. It is a point where election administration
14 interfaces with election technology. But there definitely are
15 things that I can speak to about the election technology side
16 of that, you know, what is required to make sure that the
17 technology is functioning correctly.

18 THE COURT: Okay.

19 MR. McGUIRE: Your Honor, do I need to go further or
20 can I ask --

21 THE COURT: No. If there is something you want to
22 wrap up, that is fine but --

23 MR. McGUIRE: Yeah.

24 **Q. (BY MR. McGUIRE)** So I just wanted to talk to you,
25 Mr. Skoglund, about -- I would like to put up Exhibit PD 20.

1 Mr. Skoglund, I'm going to represent to you that this is
2 the Georgia statute that pertains to testing pre-election
3 testing and voting equipment.

4 And if we could please scroll down to the highlighted
5 portion in Subsection C.

6 Mr. Skoglund, it says there on or before the third day
7 preceding a primary or election, including special primaries,
8 special elections, and referendum elections, the superintendent
9 shall have each electronic ballot marker tested to ascertain
10 that it will correctly record the votes cast for all offices on
11 all questions and produce a ballot reflecting such choices of
12 the elector in a manner that the State Election Board shall
13 prescribe by rule or regulation.

14 Did I read that correctly?

15 **A.** Yes, you did.

16 **Q.** What does that mean to you as a cyber -- as a security
17 person?

18 **A.** This is essentially the description of what the logic and
19 accuracy test ought to be to ensure that the technology is
20 functioning correctly.

21 **Q.** And so when you say this is what it should be, what
22 particular aspects of this are you focused on to arrive at that
23 conclusion?

24 MR. TYSON: I'll object to the extent this calls for
25 a legal conclusion. But I believe Mr. Skoglund can answer

1 based on his personal understanding of it.

2 MR. McGUIRE: I'm just asking, Your Honor, as a
3 security person what does he -- which aspects of this does he
4 feel are sufficient because he just said it was sufficient.

5 THE COURT: Okay. Proceed.

6 **A.** The keywords that jump out to me there are the -- in the
7 second line of it where it says each electronic ballot marker
8 and then in the following line when it says record the cast
9 votes for all offices and all questions. To me, that is a good
10 comprehensive way to define the scope of what we're testing,
11 the question that we're asking when we perform logic and
12 accuracy testing.

13 We're going to be testing every BMD for every office and
14 every question that is tested will correctly record the votes
15 and produce the ballot.

16 MR. McGUIRE: Thank you.

17 And we can take that exhibit down. If we could put
18 up PD 19, please.

19 **Q. (BY MR. McGUIRE)** Now, Mr. Skoglund, I'm showing you PD
20 19, which is the document that is already in the record. It is
21 Document 809-4, Page 25. If we could scroll down so that
22 Section D is visible in the frame.

23 Mr. Skoglund, have you seen this document before?

24 **A.** I have.

25 **Q.** What is your -- what is this document?

1 **A.** This document is what I believe is the guidance from the
2 State of Georgia or from the State Election Board to how the
3 BMDs and printers should have their logic and accuracy testing
4 performed.

5 **Q.** And this Section D deals specifically with the BMD and
6 printer. Can you take a quick look at that and tell us in your
7 view is that equally adequate as the statute that we just
8 looked at?

9 **A.** No, I don't think that it is adequate.

10 **Q.** Why not?

11 **A.** Because it doesn't test -- it doesn't follow what was just
12 in the previous statute that we looked at. It is not testing
13 every machine and every what we call ballot position. Instead,
14 it says that it is acceptable to just test some of those on
15 some of the BMDs and not other ones on other BMDs.

16 And it notes there at the very bottom all unique ballot
17 styles do not have to be tested on each of the BMDs, which I
18 think is not correct.

19 **Q.** Okay. When you say not --

20 THE COURT: Go ahead.

21 MR. McGUIRE: I'm sorry, Your Honor.

22 **Q.** **(BY MR. McGUIRE)** When you say not correct, what do you
23 mean exactly? Do you mean not consistent with the law, or do
24 you mean it is not adequate? What do you mean?

25 **A.** Both actually. I should clarify. Yes, it is both. I

1 think it doesn't -- it does not match my understanding of what
2 the statute was that we just looked at. And it also is, again,
3 defining the scope of testing such that we are not asking all
4 the questions to all the machines all the time.

5 **Q.** And if this is the -- if this is the procedure which BMDs
6 and their printers are actually tested under, do you have an
7 opinion on the significance of the difference between this
8 procedure and what the statute requires for purposes of the
9 security of the system?

10 MR. TYSON: I'll object to the extent this assumes
11 that there is a distinction between those two, but I understand
12 Mr. McGuire's question.

13 THE COURT: Go ahead and proceed.

14 **A.** I'm sorry. Could you ask the question again.

15 **Q. (BY MR. MCGUIRE)** Yeah. I may not be able to ask it in
16 exactly the same words. But, you know, to the extent that you
17 understand this procedure that we're looking at, this D,
18 testing of the BMD and printer, do you have an opinion on the
19 significance of the departure between this document, these
20 procedures, and what you understood the statute to require?
21 Does it matter?

22 MR. TYSON: (Unintelligible). Sorry.

23 **A.** Yes, I think it does matter. Not just in a legal sense.
24 But in a technical sense, I think it matters. And there is a
25 good recent example of that. In Northhampton County,

1 Pennsylvania, where I reside -- in the state I reside, in
2 November of last year, there was some poor configuration of the
3 ballot-marking devices that is a ballot marker and tabulator
4 all in one. And the configuration problem -- the systems were
5 not adequately logic and accuracy tested. So those
6 configuration problems weren't caught. And the result is that
7 there were some contests on election night that had correct
8 tallies and other contests where the candidate that was
9 eventually the winner got zero votes.

10 And so not only was it, you know, a big fiasco to sort of
11 sort out, but the public's trust in the election was really
12 damaged. Thankfully this failure was on a machine with paper
13 and the error was on the side of the tabulation of that paper.
14 So the paper could be rescanned.

15 But if the error had been in the ballot-printing portion,
16 as Dr. Stark has testified about is a concern, it would not
17 have been able to correct those results.

18 **Q. (BY MR. McGUIRE)** And by that, you mean using this
19 procedure versus the one in the statute?

20 **A.** That's right. If you don't catch the problems in the BMD
21 and ask yourself if every BMD is operating properly, then you
22 open yourself up to having results that you can't detect are
23 wrong.

24 **Q.** The example you just gave in Northhampton, Pennsylvania,
25 was of a misconfiguration of the BMDs. Would your conclusion

1 hold true in the event of intentional malware attack that had
2 altered the functioning of one or more BMDs?

3 **A.** Yes, it would. There is no real distinction between
4 manipulation, you know, or malfunction. There is an intention
5 is the difference. But the machine is not acting according to
6 its specifications. It is not doing what it is supposed to,
7 which is what logic and accuracy testing is designed to test.

8 **Q.** Okay. So I asked you about the changes to central count
9 scanner settings that the plaintiffs have proposed.

10 You heard Dr. Coomer and Mr. Harvey suggest on Friday that
11 changing scanner settings might implicate EAC certification,
12 did you?

13 **A.** I heard them say that.

14 **Q.** Okay. Do you agree with their testimony on that point?

15 **A.** No, I do not.

16 **Q.** Why not?

17 **A.** The EAC certification doesn't reference specific settings,
18 such as color and gray scale and dots per inch. So when
19 Democracy Suite 5.5-A is certified, it is certified for all
20 available settings. And the scanner documentation shows that
21 these settings are available.

22 **Q.** So the EAC certification does not specify the DPI setting
23 required for central count scanners?

24 **A.** It does not.

25 **Q.** Okay. And are you aware -- and it doesn't specify that

1 central count scanners have to be set to scan only in black and
2 white?

3 **A.** That is correct. On the dots per inch, I would also add
4 my understanding from the previous testimony is that it is
5 actually different on different machines, the central count
6 scanner and the precinct scanners. So it is already different.

7 **Q.** Are you aware of anything in the EAC test plan or the
8 certifications or approvals of 5.5-A or to the extent you know
9 5.5-A (GA) that would preclude Georgia from adjusting the
10 settings of the Dominion central count scanners?

11 **A.** I do not.

12 **Q.** In your opinion, would an order from this Court that
13 requires changes to those scanner settings void or violate any
14 current certification or approval from the EAC?

15 **A.** No, I don't think it would.

16 **Q.** Okay. Finally, I want to switch gears and ask you about
17 the plaintiffs' request for BMDs not to be used and instead for
18 paper ballots to be used for in-person voting.

19 I understand from your declaration in October of 2019 in
20 this case that you are a judge of election in Montgomery
21 County, Pennsylvania, and that the polling place you oversee
22 uses a voting system manufactured by Dominion and configured
23 for hand-marked paper ballots; is that true?

24 **A.** That is correct. We use Democracy Suite 5.5-A, the same
25 system.

1 Q. So, first of all, what is a judge of elections in
2 Pennsylvania?

3 A. I'm not sure what the term is in Georgia. It is the head
4 poll worker, the person who runs the poll placing and performs
5 sort of the highest level tasks in the polling place.

6 Q. So the hardware and software that you use in Pennsylvania,
7 how similar is it to what the plaintiffs are proposing should
8 be used here in Georgia?

9 A. It is the same suite of software. We use the -- what I
10 understand to be the same hardware as well. We have the
11 ImageCast X BMD with the external printer, as you have seen
12 before, and the ImageCast precinct scanner.

13 The difference is in the way that we deploy those. We
14 only deploy one scanner and one ballot-marking device per
15 polling place rather than many of the ballot-marking devices.

16 Q. And the rest of the voters vote how?

17 A. They vote -- the voters who don't use the ImageCast X BMD
18 vote by hand-marked paper ballot. That is the majority of
19 voters. In fact, in the last two elections, I think it has
20 been all but one voter who voted by hand-marking a ballot.

21 Q. And you heard Mr. Barron's testimony that using
22 hand-marked paper ballots on election day would not -- would be
23 possible for Fulton County?

24 A. Yes, I did.

25 Q. Does your experience in Pennsylvania support that

1 conclusion by him?

2 **A.** Absolutely. It works very well for us. We have been very
3 happy with the system.

4 **Q.** Now, you also heard him testify that early voting might be
5 a concern for Fulton County, did you not?

6 **A.** I did.

7 **Q.** Do you have any reason -- well, first of all, do you have
8 early voting in Pennsylvania?

9 **A.** We don't have early voting in Pennsylvania.

10 **Q.** Okay. So do you have reason to disagree with Mr. Barron's
11 apprehension about conducting early voting without BMDs?

12 **A.** No. I think that it is very feasible. I mentioned before
13 that I have provided some testimony to the New York City
14 council. That was actually specifically on this question.

15 New York City had implemented early voting, and they were
16 trying to figure out how they were going to do that
17 logistically and from a technology perspective. So I was
18 invited to speak and to talk about my recommendations to the
19 city council.

20 And I recommended to them -- they were trying to decide
21 between rolling out ballot-marking devices for everyone, which
22 is what some people were pushing for, versus other solutions.
23 I recommended other solutions being a ballot-on-demand
24 printing. That is ultimately what New York City ended up
25 adopting. And my understanding is that worked very

1 successfully and they are going to continue using it.

2 The idea is just that at each early voting location you
3 have a printer that can print a ballot on demand. And the
4 solution that they went with is one made by KNOWiNK, the
5 pollbook company that, I believe, Georgia uses as well. And it
6 is called Poll Print. It directly interfaces with the pollbook
7 so that when the voter checks in their ballot style is pulled
8 up by the pollbook and the ballot instantly prints and it is
9 handed to the voter for them to go then take and hand-mark. So
10 it is sort of a just-in-time printing.

11 **Q.** So in that situation as I understand it, you are saying
12 that the early vote center would stockpile some ballots but it
13 would print most of them?

14 **A.** I think that their solution is to print them all
15 immediately. I'm not positive on that. But I had actually
16 recommended to them that they didn't have to do immediate
17 printing, that they also could stockpile a sort of reservoir of
18 each ballot style. So maybe 20 to 50 ballots of each style and
19 then you pull the appropriate, you know, ballot style for each
20 voter. Then you can use a ballot-on-demand printer to
21 replenish those reservoirs of ballots as they were given out.

22 **Q.** Okay. So in your supplemental declaration, which for the
23 record is Document 680-1 at Page 29 -- I'm going to point
24 specifically to Paragraph 11 -- you said that hand-marked paper
25 ballot systems have shorter lines due to the rate in which a

1 series of voters can move through the polling place.

2 Have you observed this to be true in jurisdictions you are
3 familiar with?

4 **A.** Yes. I think I have seen in my experience and I have read
5 studies that show that it is true. The reason why -- in my
6 county before we switched systems, we had DREs. And my polling
7 place had two DREs, which meant that two voters could vote at a
8 time. And that was the total throughput of the polling place.
9 Only two voters could cast their vote at any time.

10 And if you had a particularly long ballot, it would take a
11 long time for voters to make up their mind in the booth. But
12 under the new system, when voters come into the poll, then we
13 give them their ballot. They go to privacy stations to do the
14 time-consuming part, to mark their ballot. In my polling
15 place, we have seven to eight places for them to do that that
16 are designated already. It is a combination of standup
17 cardboard lecterns that people can mark their ballot at and
18 also some tabletop privacy screens that are just very
19 inexpensive plastic dividers.

20 And there's actually a couple of others that are in supply
21 that we can set up if we need more and they provide clipboards
22 if we needed any more. So that means that the throughput in
23 our system now is much larger. It gives you potentially seven
24 or eight voters who can vote at any one time instead of two.
25 And that is the time-consuming part.

1 The process of scanning on the ImageCast precinct is very
2 quick. So you can just feed your ballot in and then go on
3 your --

4 **Q.** So from the voter's perspective in your experience, what
5 is -- is there a benefit to using hand-marked paper ballots
6 versus BMDs?

7 **A.** Definitely. There are a lot of -- a lot of them. One of
8 them comes from that long line thing. I always have really
9 liked the fact that voters who may need more time with their
10 ballots, either to make decisions or maybe they have literacy
11 challenges or language challenges -- they can take their time
12 and not feel the pressure of a line building behind them.
13 Where with the old system, you know, those voters had people
14 behind them, you know, waiting and wanting them to hurry up,
15 you know, visibly agitated. Whereas, now you can sit and take
16 your time. And a slow voter and a fast voter can be voting
17 side by side. Several fast voters can move through the process
18 without the slow voter holding things up.

19 **Q.** Are you aware of any research that bears on this question
20 of voter delay when using paper ballots versus electronic
21 voting?

22 **A.** I am. There's two papers that come to mind. One is there
23 is a paper that is coauthored by Charles Stewart from MIT. He
24 is someone who I really admire. He takes a very data-driven
25 approach to looking at election problems. And he looked at

1 this issue and found that waiting times are uneven across the
2 country, found that a lot of the problems are in sort of the
3 southeastern states with long lines, and concludes that those
4 lines have an effect on voter trust of the system.

5 He determined that if you wait in line you are more likely
6 to not trust your election and also that you are not as likely
7 to trust the elections of other people in other places as well.
8 So it has an overall diminishing effect on voter trust.

9 **Q.** And you said that was one of the studies. Was there
10 another?

11 **A.** Yes. The other study is looking at Maryland elections and
12 using data and computer simulations to compare the wait times
13 between touch screen DREs and hand-marked paper ballots. And I
14 found that the DREs are a limiting resource in the way that I
15 just described, that they provide a bottleneck, especially if
16 the ballot is really long.

17 They actually come up with a formula for determining, you
18 know, how many screens you would need to handle the capacity
19 and conclude that the hand-marked paper ballots are a better
20 solution because they have more, you know, throughput capacity.

21 **Q.** Okay. I would like to show you PX 61 and then PX 62 and
22 have you confirm whether those are the studies you are talking
23 about.

24 This one would be PX 61, I believe. And that is -- is
25 that one of the studies you were talking about? Or maybe you

1 could scroll down. It says waiting to vote there.

2 **A.** Can you scroll down -- is that possible? -- to the next
3 page? Sorry. Yes, that is the one.

4 **Q.** This is the Stewart paper you referred to?

5 **A.** That's correct.

6 MR. McGUIRE: Okay. Great. I would move to admit
7 this one, Your Honor, PX 61, and I would like to show you PX 62
8 next.

9 MR. TYSON: Your Honor, we'll object as hearsay.
10 Mr. Skoglund hasn't been participating in the study. He read
11 the study, and he liked it. That is the whole basis of it
12 coming in. I don't see that there is any relevance here.
13 There is no policy discussion, not what different things can be
14 done. But it is not relevant to the claims before the Court.

15 MR. McGUIRE: Perhaps I could ask another question or
16 two then of Mr. Skoglund.

17 **Q. (BY MR. McGUIRE)** Mr. Skoglund, are these studies the
18 kinds of things that you would rely upon to form your opinions
19 as an expert?

20 **A.** I would rely upon it. I have relied upon them.

21 **Q.** So in terms of the opinions you are expressing here today,
22 are these two studies -- these underlie those opinions?

23 **A.** Yes, they do.

24 MR. McGUIRE: Okay. Based on that, Your Honor, I
25 mean, he has already testified to the underlying stuff. I

1 don't know why it would be objectionable to admit it as
2 foundation for what his opinions were.

3 MR. TYSON: Again, Your Honor --

4 THE COURT: Fine. I'll just take it under
5 advisement.

6 Thank you. Go ahead.

7 **Q. (BY MR. McGUIRE)** The other one is PX 62. Is that the
8 other study you were referring to?

9 **A.** Yes, it is.

10 MR. McGUIRE: And similarly I would move for that one
11 to be admitted as well.

12 MR. TYSON: Same objection, Your Honor.

13 THE COURT: All right.

14 **Q. (BY MR. McGUIRE)** Mr. Skoglund, just to wrap up this
15 section, so in your opinion do you have an opinion --

16 THE COURT: I'm sorry. Would you just mind reading
17 into the record the name of each study and the authors and
18 their affiliation.

19 MR. McGUIRE: Certainly, Your Honor. I can do that.
20 P -- I'm sorry. Let me pull it up. 62 -- PX 61, the authors
21 are Charles Stewart and Stephen Ansolabehere, and the title is
22 Waiting to Vote. It is from the Election Law Journal: Rules,
23 Politics, and Policy dated 2015.

24 THE COURT: Its affiliation?

25 MR. McGUIRE: I'm sorry. It is -- I'm sorry. It was

1 from MIT open access articles. It is from the MIT faculty.

2 THE COURT: Okay.

3 MR. McGUIRE: The second article, PX 62, is from
4 proceedings of the 2010 electronic voting technology workshop,
5 the workshop on trustworthy elections in Washington, D.C. on
6 August 9 and 10, 2010. The title is, Queuing and Elections:
7 Long Lines, DREs, Paper Ballots. That is by William Edelstein
8 and Arthur Edelstein.

9 THE COURT: And that's Johns Hopkins University and
10 the Mr. Edelstein from the University of California in San
11 Francisco.

12 I just want in the record for it to be properly
13 referenced. Before I let them in, I'll have to take a look.

14 **Q. (BY MR. McGUIRE)** Mr. Skoglund, just to clarify one point,
15 that one article in its title referred to DREs. And we have
16 been talking about BMDs today.

17 Does that make a difference?

18 **A.** No. Because the key point of those is about providing a
19 voting resource. Right? So each one is still a resource. If
20 you have two or three or four in a polling place, that is the
21 limit of that resource.

22 And if anything, ballot-marking devices take more time
23 because there is that extra process of printing a piece of
24 paper, which hopefully voters are going to spend time looking
25 at, even if the evidence is thin that they do.

1 **Q.** So, Mr. Skoglund, based on your own experience and based
2 on what you have observed in the New York City council, do you
3 have an opinion on whether a large Georgia county like Fulton
4 could feasibly implement hand-marked paper ballot voting during
5 early voting and on election day in the time left between now
6 and when voting starts?

7 **A.** Absolutely. I mean, for hand-marked voting, that is done
8 in large cities and large counties across the nation, so, you
9 know, Boston and New York City as we mentioned. Same for early
10 voting.

11 In my personal county, we have about 75 percent, I think,
12 the size of Fulton County. I'm sort of doing rough math there.
13 But I think that is about right. We had no problems moving to
14 it.

15 **Q.** So to wrap all this up, in your expert opinion, is
16 Georgia's voting system secure?

17 **A.** You know, this question has come up a couple of times from
18 other experts as well. And in my line of work, we don't think
19 of it as being secure or insecure. And we don't try to measure
20 the distance the system is from either one of those and that is
21 because we can't predict the future.

22 Vincent Liu when he testified talked about some of the
23 engagements he's been on where they didn't find anything. But
24 he could have been an hour and a few key strokes away from
25 finding a big problem. Instead, because we can't predict the

1 future, instead we engage in something called threat modeling
2 where we try to look at the potential problems that could
3 happen and then measure the risks of those problems.

4 And the way we measure risks is with two things: The
5 likelihood of something happening and the impact if it does
6 happen. And looking at those and measuring those allows us to
7 then weigh our need to do something versus the risk involved
8 with it, to weigh competing options, and also to prioritize,
9 you know, where our biggest concerns are so that we can add
10 mitigation, which is a word just for -- you know, for lessening
11 the risks.

12 When you go on vacation, you -- you lock yours doors and
13 leave on some lights and hold the mail. Those are just
14 mitigations for you not being robbed. It doesn't mean you
15 won't be robbed while you are away. But they make the
16 likelihood less.

17 And we look for ways to build in resilience to a system.
18 A good example of that is like a power generator. If the power
19 in your house goes out, you can lessen the impact of it by
20 having a backup generator.

21 **Q.** And how would you regard Georgia's current BMD voting
22 system using the methodology you just described?

23 **MR. TYSON:** Your Honor, I'll object to this line of
24 questioning as beyond the scope of Mr. Skoglund's expertise.
25 This is now about threat modeling, risk assessments. I don't

1 think we have had any indications of the expertise of
2 Mr. Skoglund in those areas.

3 MR. McGUIRE: Your Honor, he has been all but
4 qualified as an expert in cybersecurity. And this is right
5 down the middle of that.

6 THE COURT: I'll permit it.

7 **Q. (BY MR. McGUIRE)** Again, my question, Mr. Skoglund, is:
8 How would you regard Georgia's current BMD voting system using
9 the methodology that you just described?

10 **A.** The methodology said that we would first look at the
11 threats. And those threats are not just threats of hacking by
12 foreign actors. But it is everything from machine failures to
13 long lines to running out of emergency paper ballots, power
14 outages, pandemics as we have now seen.

15 So as I understand the plaintiffs' concerns in this case,
16 a lot of those are the risks that they see in the voting
17 system, the risk of not counting votes, returning outcomes that
18 don't reflect what the voters intended, long lines, Poll Pad
19 failures. Those are what I see as the risks.

20 And we can't predict whether any of those will happen or
21 not because we can't see the future. But we can measure the
22 likelihood and the impact if they do. That is what
23 cybersecurity would do is look at the likelihood and the
24 impact.

25 And I think there has been evidence that the risks have a

1 high likelihood and a significant impact. So we would then
2 seek to mitigate those risks to try and prioritize them and,
3 you know, to lessen the impact of them by either, you know,
4 putting new measures in place or adding resilience to the
5 system so that we could recover from problems if they did
6 happen.

7 So to answer your question, I think that the current risk
8 level in Georgia's voting system is high. And I think that
9 mitigations are warranted.

10 MR. MCGUIRE: Thank you. I have nothing further on
11 direct, Your Honor.

12 THE COURT: Thank you. Does the State wish to pursue
13 any questions?

14 MR. TYSON: Yes, Your Honor. Just a few.

15 CROSS-EXAMINATION

16 BY MR. TYSON:

17 **Q.** Yes. Good afternoon again, Mr. Skoglund.

18 Mr. Skoglund, I want to ask first: If nothing changes in
19 Georgia's election system, can Georgians have confidence in the
20 outcome of the 2020 elections?

21 **A.** It goes back to what I just answered in my last question.
22 It is not a yes-or-no answer. I think that we can't predict
23 the future in the same way you can't predict if your house is
24 going to be robbed. All we can do is lessen the risk.

25 So, you know, I can't predict what will happen and no one

1 else can. I think that we have seen that the threats are very
2 high and very prevalent. I think there is plenty of evidence
3 of that, plenty of reason to be concerned, and therefore reason
4 to take steps to mitigate that.

5 But I don't think we can form an opinion about it is
6 secure or is it not secure. I just don't think that is a
7 useful question.

8 **Q.** Have you ever designed a logic and accuracy testing
9 process for any voting system?

10 **A.** I have not designed one. I have made recommendations
11 about how they should be designed.

12 **Q.** Have you ever conducted a logic and accuracy testing
13 regime for any election system?

14 **A.** I have never held that position, no.

15 **Q.** And when you mentioned BMDs in Pennsylvania that had the
16 configuration errors, those were not Dominion BMDs; correct?

17 **A.** They were not.

18 **Q.** You mentioned that you testified to New York City
19 regarding the implementation of early voting.

20 Do you recall that testimony?

21 **A.** That's correct.

22 **Q.** What time line was New York City able to utilize to
23 implement early voting?

24 **A.** I don't know the exact time line. I know that in 2018, I
25 believe, is when the legislation was passed to permit it. I

1 spoke in April of 2019, and they had not made a decision and,
2 you know, did not make one, I know, for a couple of months at
3 least afterwards. I don't know exactly when.

4 But they did end up making a decision between the time
5 that I testified and November. I don't know the exact dates.

6 **Q.** And is it your testimony that there is sufficient time in
7 Georgia to design a complete paper ballot early voting system
8 in the 28 days between today and when early voting begins?

9 **A.** I'm not an expert on election administration. So I
10 wouldn't want to try to characterize that. But I know that --
11 yeah. I'll leave it at that.

12 **Q.** And you indicated that a solution can be printing ballots
13 at an early voting site on the spot; correct?

14 **A.** Correct. That is what my understanding is New York City
15 is doing with the KNOWiNK Poll Print.

16 **Q.** Do you recall Mr. Harvey's testimony that there is one,
17 maybe a couple of more ballot printing -- ballot-on-demand
18 printers in each county?

19 **A.** You mean that the counties already own one in their
20 offices?

21 **Q.** Yeah.

22 **A.** That is correct. That is very common for many election
23 offices that they have one, you know, in the office that they
24 can use to print ballots in a pinch.

25 **Q.** And you heard Mr. Barron's testimony that there will be at

1 least, I believe it was, 33 early voting sites in Fulton
2 County?

3 **A.** Yes, I did.

4 **Q.** And so that would require a significant number of
5 purchases in addition to the setup to even think about that
6 kind of operation; right?

7 **A.** It would require new purchases. Yeah. In New York City,
8 I think they had 60, 65, somewhere in that range early voting
9 sites. So yes, you would need to make new purchases.

10 **Q.** And you testified about line length, and you said that the
11 number of stations or the equipment was relevant to that?

12 **A.** Correct.

13 **Q.** And do you know what the allocation of BMDs per voter for
14 each precinct in Georgia is?

15 **A.** I heard it at one point. If you were to tell it to me, I
16 could refresh my memory. I want to say it was in the 300s.
17 But I don't recall.

18 **Q.** Well, what I really want to ask is: You didn't take that
19 into account in forming opinions about the -- you didn't take
20 into account Georgia's allocation of resources when forming
21 your opinions about the number of voting stations and
22 line length in Georgia; correct?

23 **A.** No. My testimony was about generally a comparison between
24 the two. And the study, you know, that I cited was about
25 looking specifically at Maryland.

1 Q. And you agree that the throughput, as you referred to it,
2 is based on the allocation of equipment; correct?

3 A. Correct. That is the limiting constraint resource. You
4 can only have that many voters voting at that -- at that time.
5 If a machine goes down for any reason or if the activation
6 cards stops working, then that number gets reduced.

7 MR. TYSON: Thank you, Mr. Skoglund. I don't have
8 any further questions.

9 THE COURT: Anything occasioned by that?

10 MR. McGUIRE: I'm sorry?

11 THE COURT: This is just -- Mr. McGuire, did you have
12 anything else?

13 MR. McGUIRE: No, nothing on redirect. No, Your
14 Honor.

15 THE COURT: All right. Would you wait a minute and
16 let me just see whether I have any questions.

17 THE WITNESS: Absolutely. Thank you.

18 THE COURT: Could you bring up the logic and accuracy
19 testing document again? I don't know what that document is.

20 MR. McGUIRE: PD 19.

21 EXAMINATION

22 BY THE COURT:

23 Q. Mr. Skoglund, what is the -- based on your own programming
24 and experience in cybersecurity, what is the role of logic and
25 accuracy testing just looking at the big picture?

1 **A.** I mean, what you ultimately are trying to find out is do
2 we have belief that every piece of equipment is going to
3 operate properly and record votes properly on election day.
4 And so we're crafting a set of questions to ask in advance to
5 try and ascertain if that is true.

6 So I would say you would want to test every machine
7 because you want them all to work properly. You want to test
8 every ballot style because you want every ballot style to work
9 properly. And you want to check every contest. At a minimum,
10 you want to make sure that every candidate is able to receive a
11 vote; that if you were to put a vote -- let's say a contest
12 between George Washington and Thomas Jefferson -- a vote for
13 George Washington should be able to be marked and observed to
14 be correct and it should be able to go through the tabulator
15 when you do the logic and accuracy testing on the tabulator to
16 show that it did, in fact, record a vote for George Washington.
17 And you should do the same for Thomas Jefferson to make sure
18 that his -- a vote for him would work all the way through to
19 the tabulation.

20 But you also have to make sure that the -- that the votes
21 aren't being swapped, that they are not crisscrossing. Right?
22 If you just vote one vote for George and one vote for Thomas,
23 you won't necessarily know that they -- that the correct winner
24 is going to be indicated. So I think you have to check a
25 number of things.

1 And I actually recommend usually that we go a step further
2 even than the statute does and test the audio ballot that is
3 used by voters who are blind to ensure that there is no errors
4 there because you wouldn't want those to be crisscrossed. And
5 the same for language -- for ballot marking in other languages.
6 There is a lot of testing that goes into these ballot-marking
7 devices to make sure that the technology is going to behave
8 correctly on election day.

9 **Q.** So when you say crisscross, you mean that I voted for
10 George Washington but it is recorded as Thomas Jefferson?

11 **A.** Correct. Let's say that I followed a logic and accuracy
12 procedure. So I cast one vote for George Washington, and I
13 printed on the ballot-marking device, and I run it through the
14 tabulator. Then I do another one for Thomas Jefferson and do
15 the same thing.

16 Now I have one vote for each. So when I look at the final
17 results, I expect to see one vote for each. But how do I know
18 that they didn't get swapped? How do I know that it correctly
19 attributed them?

20 So usually what you would do is give two votes for George
21 Washington and one vote for Thomas Jefferson. That way in the
22 end results you can see each candidate was capable of receiving
23 a vote and they were correctly attributed.

24 **Q.** What, if any, issues do you see if you are only testing
25 for one candidate's race per machine?

1 **A.** Then if you are thoroughly testing that candidate's race,
2 then you can feel good that that candidate's race is not going
3 to have problems. You cannot make any assertions about any
4 other race on the ballot.

5 It is similar to the problems with the risk-limiting
6 audits that we talked about. If you are only auditing one
7 race, you are only going to detect problems in one race.

8 Once you test, the scope of your testing determines
9 whether you will find the problems. If you don't look, you
10 can't find them.

11 **Q.** Well, if I -- I mean, this is structured right now so that
12 I have, let's say, five machines. I test machine Number 1 on
13 the presidential race and the next one, machine Number 2, on
14 senate race number A or letter number A.

15 Does the fact that I've been able to test the presidential
16 race on the first machine tell me anything about the
17 functioning and -- internal functioning and accuracy of machine
18 number B that I'm testing for the senate race?

19 **A.** It does not. It does not. And you can make -- you can
20 make an assumption or use that to think that maybe it should be
21 right. But you have not tested it. So you don't know.

22 **Q.** And I mean, each of these are independent basically
23 computers; is that right?

24 **A.** That's correct.

25 **Q.** All right. And with respect to the unique ballot style,

1 what is the issue in your mind specifically about why each
2 ballot style should be tested on each BMD? I know it provides
3 that they don't have to be. But why in your view --

4 **A.** Ballot style is a separate discrete unit. So an example
5 is in a primary you might have a ballot style for the
6 republicans and a ballot style for the democrats. Those are
7 two separate styles.

8 In some -- some polling places, you may have, you know,
9 school board elections that are different on one ballot and not
10 on the other. Whereas, everything else on the ballot is
11 potentially the same.

12 I think you need to check both of those because the ballot
13 itself is not just the change to the bottom of it. There's all
14 sorts of other information that is there as well.

15 **Q.** You mean the races. But does it also affect in terms of
16 what is being tested on a logic and accuracy how it -- how the
17 computer computes and how it records the information?

18 **A.** I'm sorry. Could you ask that one more time.

19 **Q.** I'm just trying to understand. Is the logic and accuracy
20 testing regarding how the computer computes that particular
21 race and also where it locates the information?

22 **A.** Yes. So on the ballot-marking device, you are testing
23 that it marks a ballot correctly; that whatever you do on the
24 screen is reflected in what is output on paper at the end.

25 On a tabulator, you're validating that when you take the

1 input of the ballot into the tabulator that the totals that
2 come out at the end match correctly. In both cases, you are
3 looking to see if what goes in gives you what you expect to
4 come out on the other side.

5 **Q.** And I guess from your perspective -- and I know I have
6 asked this in different ways. But I want to just make sure.

7 What you perceive as the problem about just testing one
8 race is it doesn't yield information about how the computer
9 handles the full range of the ballot?

10 **A.** That is correct. It is not testing that each of these
11 machines is behaving properly on all of these contests. So if
12 you -- if we sort of give a hypothetical example, let's say
13 that there was a contest where we found that one ballot
14 style -- the school board race at the bottom was computed
15 correctly but on another ballot style it wasn't. And we asked
16 ourselves afterwards, well, why didn't we detect that? Why
17 didn't we find that there was this problem in this one race?
18 And it is not just hypothetical. That is actually what
19 happened in the example I gave in Northhampton County.

20 There was some races that worked perfectly fine. Their
21 totals were exactly right. If you had looked at that race,
22 there was no problem. But then there were other contests where
23 something that was a little bit different about those contests
24 and the way that it was set up caused a problem so that some
25 candidates got zero votes -- where winning candidates got zero

1 votes.

2 MR. MCGUIRE: Your Honor, if I may, just a couple of
3 questions inspired by your own.

4 REDIRECT EXAMINATION

5 BY MR. MCGUIRE:

6 **Q.** Mr. Skoglund, is it fair to say that logic and accuracy
7 testing is a functional test or is it a security test?

8 **A.** It is both. I mean, it is the way that you make sure that
9 it is -- that it is working properly. And that is in the realm
10 of security. I mean, like I said, the threats to security are
11 not just from foreign nation states or from insiders who may be
12 trying to manipulate the election and have access to the
13 files -- right? -- and know what you are going to test where.

14 It is also, you know, for more common type problems as
15 well. In the case of Northhampton County, it was a common type
16 mistake in the configuration.

17 So it is both. It is a functional test that is an
18 important part of security.

19 **Q.** Would you expect conducting a logic and accuracy test to
20 necessarily reveal the existence of malware on a system, for
21 example?

22 **A.** No, it would not reveal that. I mean, it could reveal
23 that. If there was, let's say, clumsy malware, it might reveal
24 that at that point. But the famous case is Volkswagen's test
25 of their emissions. You know, they gamed the system so that,

1 you know, when they were testing it, like during logic and
2 accuracy essentially for the cars, they would pass their test.
3 But then in the real world, you know, they were failing the
4 test.

5 And the same thing is here. You could easily have malware
6 that was set to not operate before a certain date or to wait
7 until, let's say, 53 ballots were cast before it kicks in. So
8 there are all sorts of ways malware could evade these tests.

9 MR. McGUIRE: Thank you. Nothing further.

10 RE CROSS-EXAMINATION

11 BY MR. TYSON:

12 Q. Mr. Skoglund, just one brief question. You have never
13 seen actual malware in an actual election affect the
14 ballot-marking device; correct?

15 A. I'm sorry. When you say have I seen, what do you --

16 Q. Do you know of any instance in the United States where
17 malware has been put on a ballot-marking device in an actual
18 election?

19 A. No, I don't. Ballot-marking devices are very new to the
20 market. They really just started being sold as systems for all
21 voters to use in the last four years or so.

22 Before that, they were much simpler. They were really
23 just filling in the ovals on regular ballots.

24 MR. TYSON: That's all I have, Your Honor.

25 THE COURT: Thank you very much, sir.

1 Are we through with the presentation of evidence,
2 Counsel?

3 MR. TYSON: For the State defendants, yes, Your
4 Honor.

5 MR. CROSS: Yes, for Curling plaintiffs.

6 MR. MCGUIRE: For Coalition as well.

7 THE COURT: All right. Are there any -- if there are
8 any exhibit issues or any evidentiary issues, why don't we take
9 them up afterwards and just making sure we have the exhibits in
10 order or that I have ruled on everything -- whatever is
11 outstanding or that I will in that event.

12 We're about to -- for those who are participating --
13 everyone is participating remotely -- but listening in, we are
14 going to have closing argument.

15 I have allocated 20 minutes. The plaintiffs have two
16 sets of counsel. Fulton County and the State represent the
17 defendants, and it will be the same thing.

18 So if the State defendants haven't determined how you
19 are dividing it, please do. I could slow things up because I
20 have my own questions as you have all seen and have some more
21 questions about the audit issues.

22 I will not -- any time I spend on my questions -- you
23 responding to my questions I won't count against you. I'm
24 going to allow everyone to take a restroom break, and we'll --
25 it is 1:47. We should come back immediately. When we see

1 everyone here, we will start then. Otherwise, I will assume we
2 will be starting within five minutes.

3 MR. TYSON: Thank you, Your Honor.

4 MR. CROSS: Thank you.

5 **(A brief break was taken at 1:47 P.M.)**

6 THE COURT: All right. Are we ready to begin?

7 MR. BROWN: Yes, Your Honor.

8 MR. TYSON: Yes, Your Honor.

9 THE COURT: All right. Who for plaintiffs is
10 proceeding?

11 MR. McGUIRE: Yes, Your Honor. We were planning to
12 spend ten minutes for -- I would go for ten minutes and then
13 Mr. Cross would spend ten minutes on rebuttal.

14 THE COURT: All right.

15 MR. McGUIRE: Shall I begin?

16 THE COURT: Yes.

17 CLOSING ARGUMENT

18 MR. McGUIRE: Thank you, Your Honor. I'm Robert
19 McGuire. And I'm counsel for the Coalition plaintiffs in this
20 case.

21 In the course of bringing this request for relief,
22 we, the plaintiffs, have been guided by this Court's previous
23 holding from September of 2018 when the Court ruled that if a
24 new ballot system is to be launched in Georgia in an effective
25 manner it should address democracy's critical need for, quote,

1 transparent, fair, accurate, and verifiable election processes
2 that guarantee each citizen's fundamental right to cast an
3 accountable vote.

4 Now, all of the evidence that is in front of the
5 Court, whether in the papers or through this three-day hearing,
6 shows that the State's BMD system satisfies none of these
7 requirements. As the Supreme Court held in *Wesberry vs.*
8 *Sanders* in 1964, the right to vote is one of our most precious
9 rights. Other rights, even the most basic, are illusory if the
10 right to vote is undermined. And that is exactly what has
11 happened or will happen if the changes that the plaintiffs are
12 requesting are not made for the upcoming November election.

13 Mr. Tyson said in his opening that ultimately the
14 plaintiffs want to vote using a different system in their
15 precinct. He calls this a policy dispute that the plaintiffs
16 lost in policymaking bodies and they are trying to enforce in
17 court.

18 Nothing could be further from the truth. The
19 plaintiffs here are not asking for a whole new voting system.
20 They are not asking for a different voting system than the
21 voting system that has been put in place. What we are asking
22 for are four constitutionally required improvements to the
23 existing voting system. And each of these four improvements
24 that we are asking the Court to order will either remove
25 complexity and risk or they will add much needed redundancy.

1 So I'm going to go through each of those four items of relief
2 very briefly.

3 Improvement one is to require the State to provide
4 updated paper pollbook backups in the polling places to ensure
5 that there is no disenfranchisement of in-person voters as we
6 have seen in past elections.

7 Improvement two is going to remove the BMD touch
8 screen printer combo and instead have in-person voters use
9 hand-marked paper ballots as the default voting method.

10 Improvement three has to do with scanning. For
11 central scanning, the Secretary should change the sensitivity
12 settings on the scanners so that any perceptible voter mark is
13 either counted or reviewed by a vote review panel. For the
14 precinct scanners, voters should be provided black pens that
15 they can use to mark emergency ballots.

16 Fourth and finally, we have improvements that we are
17 asking the Court to order in respect to auditing. So I'm going
18 to briefly touch on each of these four.

19 With respect to updated paper pollbooks -- updated
20 paper pollbook backups, the State defendants have never denied
21 that their malfunctioning electronic pollbooks led directly to
22 long lines and resulting disenfranchisement during the June
23 primaries here in Georgia.

24 Mr. Barron confirmed that he and the other metro
25 counties are still experiencing serious problems with the Poll

1 Pads in that September election. We are still experiencing
2 them in the September election. He also confirmed that having
3 updated paper Poll Pad -- pollbook backups would help. This
4 Court has been asking the State defendants since at least the
5 December 6th, 2019, status conference, which is discussed in
6 our brief for the Poll Pad motion at 800-1 at Pages 8 and 9 --
7 the Court has been asking the State defendants since at least
8 December 2019 why updated paper pollbook backups should not be
9 granted. And at this hearing when asked what the burden would
10 be upon the State to provide this easy and effective remedy,
11 Mr. Harvey still had no answer.

12 In our brief, 800-1, on the pollbook issue, Coalition
13 plaintiffs described in exhaustive detail our efforts to try to
14 convince the defendants to make this change outside of
15 litigation. It is an easy change to make.

16 It is clear the State defendants are not going to do
17 anything unless they are ordered to do so. And this is the
18 opportunity for that improvement to be made.

19 The second improvement that we are requesting is to
20 remove BMD touch screen and printer combos and use hand-marked
21 paper ballots instead. The *United States vs. Saylor* case from
22 the Supreme Court in 1944 recognized that voters have a right,
23 quote, to have their expressions of choice given full value and
24 effect by not having their votes impaired, lessened,
25 diminished, diluted, and destroyed by fictitious ballots

1 fraudulently cast and counted, recorded, returned, and
2 certified. That is a right that is 70 years old in the Supreme
3 Court's eyes, and it cannot be guaranteed by Georgia's current
4 voting system because the lack of security makes it impossible.

5 Harri Hursti's testimony showed that the BMDs are
6 insecure and simply cannot be secured. He showed that the
7 system hasn't been hardened, that the BMDs have a huge attack
8 surface. He showed that Xbox console and Russian games are
9 installed on the EMS servers in multiple counties. Physical
10 security of the EMS server is all but nonexistent. He showed
11 that multiple ballots can be printed and cast by a voter.

12 The State's defense that the system is certified by
13 the EAC provides no comfort for the reasons that Mr. Skoglund
14 testified about under seal. As Harri Hursti explained, voting
15 system testing focuses on functionality, not security.
16 Penetration testing by voting system labs is very limited.

17 Dr. Halderman's testimony showed that the BMD system
18 is vulnerable to undetectable manipulation. The very same kind
19 of evidence underlay this Court's decision to find the DREs
20 unconstitutional. The same kind of reasoning justifies finding
21 the BMDs unconstitutional now.

22 This insecurity cannot and is not being remedied.
23 The LAT procedures, which aren't even capable of catching
24 sophisticated malware, as Mr. Skoglund testified just moments
25 ago -- they are not even being run in their most bare bones

1 basic fashion that State law requires. Each machine is being
2 tested on one contest, not even on multiple ballot styles. And
3 that is the State's official guidelines. The State just
4 doesn't do the testing that even State law requires.

5 You have heard from Professor Stark, Dr. Stark that
6 BMDs are not auditable. There are multiple reasons for it.
7 But people don't look -- they don't look at their ballots.
8 They don't review whether the ballot card that is coming out of
9 the printer matches what they did on the machine. And because
10 of that, the BMD ballot cards cannot be meaningfully audited.
11 They are not what the voter did. They are what the machine
12 did. And the machine can be manipulated to do things that the
13 voter did not do.

14 Finally, on this point, BMDs violate ballot secrecy.
15 The touch screens violate ballot secrecy because they are so
16 large that anyone within a line of sight to a person's BMD
17 screen can see how that voter is voting. There is a mountain
18 of evidence in the record on this issue. It is completely
19 uncontroverted.

20 The only thing that the State says that even comes
21 close to trying to controvert it is Mr. Harvey saying that they
22 tried to develop sketches of how to set up a polling place so
23 that it wouldn't happen. But all of the evidence or most of
24 the evidence that has been introduced came in after those
25 sketches were implemented. They don't work. The State has not

1 been able to fix this problem. They are aware of the problem,
2 which is why they are trying to solve it with sketches. But
3 they are unable to solve it.

4 As a result, rights are being violated. And the
5 right to vote is being burdened -- severely burdened because
6 the secret ballot is fundamental to the right to vote. And
7 when the secret ballot is denied, the right to vote is burdened
8 because voters are unable to freely cast the votes that they
9 want.

10 It is more than feasible for this second change to be
11 implemented. It is already the emergency plan on election day.
12 Rick Barron testified that Fulton County could do it on
13 election day. You have got testimony -- you have got evidence
14 in the record that Athens-Clarke County was able to do it
15 overnight. Kevin Skoglund's testimony showed that New York
16 City was able to do it. Mr. Barron, in fact, said that not
17 only could it be implemented for election day but he testified
18 that it would actually wind up giving him more time because it
19 would take less time to deploy hand-marked paper ballots than
20 to set up all of the BMDs.

21 Although the State defendants have made the argument,
22 there is no evidence that there is not enough printing capacity
23 to make this solution possible. And there is evidence that
24 special paper isn't required for the ballots to be scanned into
25 the tabulators. So there is really no reason not to replace

1 the BMDs. There is no good reason.

2 So what about early voting? Kevin Skoglund explained
3 how that works in places that have lots of early voting
4 centers, like New York City. Ballots can be stockpiled in
5 early voting centers, especially the ones that are most likely
6 to be used in particular locations. And they can be
7 replenished every night using the ballot-on-demand printers,
8 just like New York City does. It is simply not an argument
9 that it is not possible to replace the BMDs with paper ballots.
10 It is more than possible.

11 In the 1950s and the 1960s, federal courts
12 transformed society in order to ensure that there was equal
13 treatment under the law. The interests that are at stake in
14 this case are similarly weighty, and they are no less
15 fundamental.

16 The right to vote is ultimately the right that
17 guarantees all of our other rights. That is why the Supreme
18 Court said in *Wesberry vs. Sanders* that no right is more
19 precious in a free country than the right of having a voice in
20 the election of those who make the laws under which as good
21 citizens we must live.

22 This case is about the right to vote, and it is about
23 equal protection. And it is emphatically a role of the federal
24 courts to protect those rights when they are deemed violated.
25 And the fact that there is inconvenience does not justify

1 violation of those rights. And as we have shown in the
2 evidence, any inconvenience that the State argues is overblown
3 anyway.

4 Improvement Number 3 has to do with scanning. We are
5 asking the Court to order that the scanner settings on the
6 central scanners be adjusted so that every vote counts. And
7 that is a simple -- simple procedure that can be done.

8 The Court saw the ballots where people plainly to the
9 human eye marked a vote that was then not counted. The State,
10 the defendants, Dr. Coomer -- they approached this in a way
11 which is disturbing because their answer is votes are being
12 discarded, they are just not being counted. And that is an
13 outrageous -- outrageous defense to take when people are
14 actually losing their voice in elections.

15 And we have got evidence. They can't refute it.
16 There is no evidence on the other side. I mean, we have shown
17 the Court ballots that have had votes discarded. Those people
18 have lost the right to vote on those races. They are
19 disenfranchised.

20 And the scanner settings, as Mr. Hursti explained,
21 can be adjusted in a way that makes it -- that catches those
22 votes. You just -- he suggested that you scan in gray scale or
23 color. He suggested that you scan in the higher dots per inch
24 setting, and he suggested that if that happens then you are
25 going to be able to avoid getting rid of those votes.

1 The State has adopted a new scanner rule that they
2 claim, without any evidence, will solve this problem. The only
3 evidence they have given you is Exhibit DX 4, which is the
4 Michael Barnes document. DX 4 is a long draft analysis of
5 the -- of the various scanner threshold settings. But the most
6 important part is at the very end on Page 7 in the second to
7 last paragraph. Even using the settings that they just
8 adopted, which set between 10 and 20 percent as the range for
9 the perceiving ambiguous votes, seven ballots out of their test
10 deck were read as completely blank. Those are ballots that a
11 human would have perceived as votes.

12 Under Georgia law, if you can perceive voter intent
13 from a ballot mark, you have to count that vote. Those seven
14 votes would be people who under their current settings that
15 they just adopted, would be disenfranchised. The answer is to
16 adopt scanner settings that look at any human mark below the
17 definite vote threshold as requiring review by a vote review
18 panel so that a human can look at the ballot and determine
19 whether there is actually a vote there. A machine should never
20 discard a human marking. That is arbitrary. It is
21 unconstitutional.

22 MR. CROSS: Your Honor, I'm sorry to interrupt. We
23 are going to have a time issue here.

24 MR. MCGUIRE: And you know what? My timer isn't
25 running. So I'm very sorry. I don't want to eat up Mr. Cross'

1 time. Let me just say the final point that I have on the
2 merits here.

3 Improvement four is auditing. A voting system that
4 cannot be audited to confirm the outcome it produces is correct
5 fails by definition to protect the right of each voter to enjoy
6 transparent, fair, accurate, and verifiable election processes
7 that guarantee each citizen's fundamental right to cast an
8 accountable vote.

9 Dr. Stark addressed this. If we keep the BMDs, they
10 can't be audited. They are not auditable because you are not
11 auditing what the voter did. You are auditing what the machine
12 said the voter did. And that is not an auditable record.

13 So, Your Honor, we would claim that there should be
14 some auditing improvements. But they really need the BMDs to
15 be removed and replaced with hand-marked paper ballots.

16 And on that, I'll rest.

17 THE COURT: Yes. I would like to ask you one
18 question that I'm not counting against your time. I don't have
19 right now Mr. Barnes' analysis in DX 4 in front of me. And I
20 will pull it up.

21 But are the -- when you talked about the seven
22 ballots that came up as blank but, in fact, are markings, is
23 that referenced in his analysis?

24 MR. MCGUIRE: It is, Your Honor. It is the second to
25 the last paragraph on Page 7 of Doc. 887-4.

1 THE COURT: Eight -- I'm sorry?

2 MR. McGUIRE: It is Document 887-4 at Page 7. It is
3 also Exhibit DX 4.

4 **(There was a brief pause in the proceedings.)**

5 THE COURT: All right. Thank you very much. I was
6 looking at the document. Thank you.

7 MR. McGUIRE: Thank you, Your Honor.

8 THE COURT: That was 7 ballots out of 29 needing
9 physical review. All right. Thank you.

10 MR. TYSON: Your Honor, I have talked to the Fulton
11 defendants, and they will not be closing separately, so we will
12 end up closing for all of the defendants.

13 THE COURT: All right. Very good.

14 CLOSING ARGUMENT

15 MR. TYSON: Your Honor, it has been said that
16 nostalgia is an incredibly powerful force. And in this case,
17 the plaintiffs are nostalgic for the day that they filed this
18 case more than three years ago. They continue to pretend like
19 nothing has changed.

20 But I think it is important for us to talk about what
21 has changed since 2017 when this case began. The Georgia
22 General Assembly and Governor endorsed sweeping update to the
23 election infrastructure in this state after the 2018 election.

24 Those updates included robust protections for absent
25 provisional ballots, updates to statutes about absentee

1 ballots, requirements to harden the voter registration
2 database. The General Assembly appropriated more than
3 \$100 million to upgrade Georgia's voting system to a paper
4 ballot system endorsed by the panel of experts on the SAFE
5 Commission.

6 And Georgia became one of only a handful of states
7 that developed statewide risk-limiting audits for use in the
8 November 2020 election working with VotingWorks. And as you
9 heard, that is the same organization trusted by the Department
10 of Homeland Security to develop and implement auditing tools
11 for elections.

12 Georgia has continued to remediate the risks
13 associated with its computer systems. And Georgia now has
14 record high voter registration, an online absentee ballot
15 request portal, and state of the art technology.

16 Plaintiffs pretend like none of this ever happened.
17 When we began on Thursday, I said you were going to hear a lot
18 of recycled theories and speculation. And that is just where
19 we have ended up. And those recycled theories and speculations
20 are insufficient to carry the plaintiffs' heavy burden to
21 clearly establish the preliminary injunction requisites for an
22 election that is underway with absentee ballots going out this
23 week and early voting beginning in 28 days.

24 First, the plaintiffs have not shown any likelihood
25 of success on the merits. They haven't shown any burden on the

1 right to vote. This is a case about ballot-marking devices
2 principally. And there has been no testimony that a Dominion
3 BMD system has ever been actually hacked in an election.

4 The plaintiffs have not been able to connect any
5 identified vulnerabilities from the old system to anything
6 related to the ballot-marking devices. The most they have to
7 hang their hat on after three days of this Court's time and
8 after obtaining thousands of documents in expedited discovery
9 is a single email about a USB drive that doesn't say for sure
10 what happened.

11 So apparently now their theory is that maybe -- just
12 maybe a single USB drive in one county somewhere in the state
13 has some sort of malware on it and it somehow works on both
14 DREs and BMDs, can adept to each election prior to knowing the
15 candidates or the races, and has remained hidden from Dr.
16 Halderman's forensic analysis of both the GEMS databases and
17 actual DREs.

18 THE COURT: I think you have to slow up, or else
19 Ms. Welch is not going to be able to get your argument. I know
20 you want to get a lot in. But you have --

21 MR. TYSON: I apologize, Ms. Welch.

22 The preliminary injunction standard of clear
23 entitlement is nowhere to be found in the evidence. Further,
24 the plaintiffs have shown at most exactly the kind of thing
25 that we can easily work through in discovery to figure out what

1 happened. And you heard extensive testimony about the
2 functioning and the hardening of the system.

3 For paper backups, we have dealt with that issue
4 extensively in the briefing. Mr. Harvey testified as to the
5 burden on the State. The printing cost is significant. The
6 Coalition plaintiffs haven't put forward contrary evidence at
7 this point.

8 On scanners, the evidence shows that reasonable
9 protocols, which are consistent with the instructions on the
10 ballot and further the State's interest in the efficient and
11 equitable administration of elections. The plaintiffs' expert,
12 Mr. Hursti, did not testify to proper settings or offer any
13 standard in the professional community. Instead, he only
14 offered that the State should evaluate and study the proper
15 settings. Well, the evidence shows that the State did so and
16 Mr. Hursti chose not to review that.

17 And even still the evidence shows that --

18 THE COURT: That is not quite right. That is not
19 quite right. I mean, basically he had one particular
20 recommendation, and there is no indication as to the DPI that
21 you looked at that at all.

22 I mean, there was a different suggestion that you
23 made I realize in terms of basically the way you assess it.
24 But there was a very concrete recommendation that there was no
25 indication that you-all looked at.

1 MR. TYSON: Your Honor, I think this gets us back
2 to -- as Dr. Coomer explained, the way that the plaintiffs have
3 framed up their threshold setting issue would require every
4 single hand-marked ballot to be reviewed if there was no vote
5 found because part of the oval would form part of the
6 percentage.

7 And so I think we're, again, at a point where if
8 we're down to -- if the State's current threshold settings and
9 the DPI settings violate the U.S. Constitution, the -- that is
10 a significant step forward, Number 1. But, Number 2, given
11 dramatic increase in mail-in voting, Mr. Harvey's testimony is
12 that having to do a personal review of every single hand-marked
13 ballot that has zero percent threshold, any stray mark
14 anywhere, would delay certification of an election at a time of
15 heightened political intensity. And that is only after the
16 voter has disregarded all the instructions of how to fill out
17 the ballot.

18 THE COURT: I don't think you really responded to my
19 question. Did anyone look at the 300 DPI? And I don't have
20 any basis from the testimony really for determining that that
21 would mean every single ballot had to be examined.

22 MR. TYSON: Your Honor, I believe Dr. Coomer went
23 into detail about the 300 versus 200 DPI, and the software is
24 built around interpreting the percentage fills based on what it
25 reads.

1 So, again, if we're at a point where we're ordered to
2 go to 300 DPI, I don't think there is any testimony that that
3 is feasible or possible under the current system, as I
4 understand it.

5 THE COURT: Okay. Go ahead and continue.

6 MR. TYSON: Thank you. The timely certification of
7 this year's election is of critical State interest that
8 outweighs even the slightest burden on the right to vote
9 relating to scanners.

10 On auditing, the evidence shows that Georgia's
11 process is even more robust than almost every other state. And
12 while plaintiff disagrees that BMD ballots can be audited at
13 all, that position is hardly uniform across the field. And a
14 reasonable policy disagreement among experts does not amount to
15 a violation of the United States Constitution.

16 Dr. Adida made clear that the process used in Georgia
17 has been carefully piloted. It is a necessary step for its
18 proper implementation, as the National Academy recommends and
19 similar to other states that have been early adopters of
20 statewide audits.

21 I know the Court had some concern earlier. The
22 audits, as Dr. Adida testified, will involve a review of
23 (unintelligible) individuals of the ballots. We are not
24 relying -- this is a ballot pulling audit. But it is not going
25 to be a situation where no one is ever looking at the actual

1 ballot to determine what the auditing process should be.

2 THE COURT: Is it correct what he said -- when I
3 asked him about that, he said, yes, we are going to look at the
4 ballot. But what he is going to do then is he is never going
5 to compare that ballot to any electronic record for that ballot
6 as to the vote actually counted.

7 So I mean, why is it meaningful? He did not -- he
8 did not respond to that question at all.

9 MR. TYSON: And I believe as you will recall, Mr.
10 Rayburn spoke back in March to the process by how they were
11 doing this, that as the auditors are looking at each ballot you
12 are looking at the ballot and the audit mark. So you are
13 looking at what did the machine interpret, what did the vote --
14 what is on the ballot, and then you are comparing that. And,
15 again, as Dr. Stark said, the purpose of a risk-limiting audit
16 is to determine did the right person win the race. It is not
17 to ensure that every single individual vote is being assigned
18 individually, but you are still looking at those issues.

19 THE COURT: I'll let you go on. We'll discuss this
20 more at the end. All right?

21 MR. TYSON: And considering, Your Honor, that the
22 vast majority of states are not going to conduct a
23 risk-limiting audit of any kind in the 2020 election, the
24 plaintiffs haven't shown that the particular auditing method
25 Georgia is using places a burden on the right to vote or is in

1 any way violative of the U.S. Constitution.

2 THE COURT: But no other state virtually has done a
3 statewide BMD system. That is the reality. You are an unusual
4 situation. There are jurisdictions -- smaller jurisdictions,
5 cities that have done BMDs. But this is basically the entire
6 state. And so it is -- it does put the State in a much more
7 challenging position.

8 MR. TYSON: Your Honor, again, I think that it is
9 important to remember that, yes, while the number of states
10 that currently use a statewide implementation of BMDs is a
11 growing number but a small number right now, very large
12 jurisdictions from Cook County to Los Angeles to other places
13 around the country are using BMDs for all of their in-person
14 voters as well.

15 So this is not a situation with the DREs where we're
16 at the tail end of a system. This is a situation where Georgia
17 is taking a significant step forward in this process in a lot
18 of areas.

19 And so I think at the end, the burden -- the failure
20 of the plaintiffs to identify a burden on the right to vote --
21 that should be the end of the preliminary injunction quest in
22 this case.

23 But it is incredible to me that despite the lack of
24 evidence of where we are on this and based solely on
25 speculation, at least one of plaintiffs' experts, Mr. Hursti,

1 told Georgians they should have no confidence in our election
2 system, a shocking allegation that to me undermines the very
3 legitimacy of the elections the plaintiffs claim that they seek
4 and is necessary for us to have a functioning democracy.

5 At the best reading, the plaintiffs at this point
6 have shown maybe three things. One, there is a disagreement in
7 the election community about the scope and the use of audits.
8 Two, the rather unremarkable fact that people with unrestricted
9 access can do what they want with computers, as Mr. Hursti
10 testified. And, three, that voters who disregard instructions
11 for filling out hand-marked paper ballots may have challenges
12 with the scanners under the thresholds that were in existence
13 before.

14 And none of these issues are sufficient for this
15 Court to find a likelihood of success on the merits for any of
16 the issues that are actually alleged in the plaintiffs'
17 complaints. And without the likelihood of success, there is
18 nothing this Court can do and there is no basis for a
19 preliminary injunction.

20 But, second, the plaintiffs have also presented no
21 evidence of any irreparable harm. They just assume irreparable
22 harm for purposes of this motion. They have nothing to say on
23 the issue about the fact that this case is ultimately about the
24 outcome of an election or the possible outcome of an election,
25 not the individual right to vote, which means the case is

1 foreclosed according to *Jacobson*.

2 In order for there to be any injury to any plaintiff,
3 a bad actor would have to design and build malware that is then
4 placed in the BMDs that are right now being programmed for the
5 November election that somehow can alter enough votes to make a
6 difference but not enough for voters to actually notice.

7 It is not a manipulation that is discovered while
8 conducting a risk-limiting audit and that actually affects the
9 outcome of an election. And compared with the plaintiffs'
10 claims in *Clapper*, that is a far more attenuated chain of
11 possibilities than in that case.

12 And so the only thing that each plaintiff has to do
13 to avoid that possible imagined theoretical scenario is to
14 request a hand-marked ballot, fill it out by hand, and then
15 return it in a dropbox by election day.

16 There is no irreparable harm here. And even if the
17 individual plaintiffs can fix their injury this way, the
18 evidence that we submitted on the Coalition for Good
19 Governance's 9940 for 2018 indicates that 98 percent of their
20 organizational budget is being spent on litigation. There is
21 no diversion of resources.

22 Your Honor, on the third and fourth prongs, again,
23 the plaintiffs' lack of evidence is staggering. They offer no
24 evidence that their preferred method of voting would remedy
25 their purported election security injury, rather than open

1 vulnerabilities for less sophisticated mechanisms of hacking.

2 They still offered nothing to explain why the system
3 they dislike is unconstitutional for them but perfectly
4 acceptable for disabled voters. They have presented absolutely
5 no evidence from anyone with statewide election experience that
6 what they propose is actually feasible.

7 They didn't give you anyone who opined that what they
8 propose can be done in the 28 days between today and the start
9 of early voting on BMDs. No one has designed a process to
10 deploy paper ballots to every county's early voting site that
11 includes every possible ballot combination. As you heard,
12 Fulton County alone would have to plan and deploy more than 700
13 different ballot instances at all 33 early voting sites in the
14 next 28 days.

15 Election day and early voting are two completely
16 different things. Absentee-by-mail processing and in-person
17 hand-marked paper ballots on election day are two different
18 things. And the plaintiffs continue to conflate them,
19 demonstrating their lack of understanding of the actual
20 administration of elections.

21 Where is the training and logistical support for that
22 system? Where are the election administration experts who
23 endorse this plan to change Georgia's election system in a
24 matter of weeks?

25 They say just turn off the BMDs and have the system

1 function properly. But there is no opportunity and they have
2 shown nothing that this is feasible or possible on the time
3 line that they have given this Court.

4 So I want to be absolutely clear the plaintiffs have
5 shown no reason why any Georgia voter should doubt Georgia's
6 election system. The plaintiffs have not shown -- I want to be
7 so clear about this -- any reason why any Georgia voter should
8 doubt Georgia's election system.

9 And, further, it makes no logical sense to exchange a
10 suspected hypothetical security risk, which has never been
11 shown in an actual election across -- for a well-known,
12 well-documented, constant, easily accessible, and universal set
13 of security risks associated with hand-marked paper ballots,
14 especially making that change in a matter of days. It doesn't
15 take sophistication to hack those. Only a Sharpie.

16 I want to remind everyone as we are wrapping up here
17 where we are in this case after more than three years. We
18 haven't yet had full discovery on these claims about BMDs and
19 the Dominion system. We haven't had expert reports. We
20 haven't had expert depositions. We haven't had summary
21 judgment briefing.

22 This is a hearing held on a reduced evidentiary
23 standard weeks before an election without the benefit of the
24 adversarial process to test the documents and the testimony
25 that plaintiffs have continued to add to the record in this

1 case. And without the Court being given the benefit of that
2 process to sort through the very complicated election
3 administration issues in this case and election administration
4 is complicated.

5 Plaintiffs are seeking these sweeping changes. They
6 are ultimately asking this Court to completely rewrite the
7 State's election code and draft detailed election
8 administration policies to supplant those that are authored and
9 enacted by the General Assembly and the State Election Board.

10 Your Honor, as someone who represents election
11 officials, I also want to be clear about this: This is already
12 an extremely high degree of difficulty election. It is a
13 presidential year. There is going to be record turnout. All
14 of us can recognize that we are operating in the midst of a
15 divisive political environment. And we are still in the middle
16 of a pandemic that has upended almost everything about our
17 lives.

18 Making further changes or adjustments to the election
19 system like the plaintiffs propose at a large level like the
20 BMDs or at a more administrative level like these pollbook
21 changes, audits, scanners -- making those changes now is a
22 recipe for disaster in an already challenging election year.

23 This Court should deny all the plaintiffs' motions,
24 allow Georgia to go forward on the system chosen by its
25 policymakers and designed by its election officials, and allow

1 this case to hear the rest of plaintiffs' claims on a normal
2 discovery track and a normal litigation track going forward.

3 Georgians can and should have confidence in their
4 elections running the Dominion voting system for the 2020
5 election.

6 Thank you, Your Honor.

7 THE COURT: All right. Let me just ask you a
8 question or two. Is there a contradiction between your
9 position that, on one hand, Georgians can rely on the absentee
10 ballot process but you cast doubt on the reliability of a hand
11 ballot process?

12 MR. TYSON: Your Honor, there are two -- there is not
13 a contradiction there because the chain of custody and the
14 statutory and administrative structures around absentee ballots
15 have been in place for a long time. They are well established.
16 They are well understood.

17 Having lots of additional live ballots beyond just
18 the emergency ballots that are in a polling place on election
19 day, that would be a completely new thing for Georgia to
20 implement. And that is a different setup than dealing with the
21 verifiable process you can use in the absentee ballot
22 situation.

23 THE COURT: With regard to -- again, this is not
24 against your time in any way.

25 But with respect to the experience of voters,

1 including members of these organizations and the individual
2 plaintiffs in coming in and having -- basically facing
3 challenges because they are either waiting in lines or there is
4 a major -- major obviously change in the introduction of a new
5 system -- and there were substantial issues in the June
6 election, and there are continuing problems. And I'm not
7 saying that they are going to continue. I know the State is
8 trying to address these. But they were enormous and enormous
9 in particular communities.

10 Why wouldn't the State under these circumstances --
11 when it has a provision under its own rules for emergency
12 ballots, why wouldn't the State truly make an arrangement for
13 that that makes it real so that we actually on election day --
14 we're not talking about before election day. But on election
15 day that if these sorts of lines develop and that are a
16 function also of not just, oh, we have got so many people
17 coming -- because that is what we anticipate, that is what we
18 want in a presidential election, and it is what we -- the State
19 has a reason to expect -- that we -- that the emergency ballot
20 process is used and that you are equipped to use it also or the
21 precincts are equipped to use it because they also are able --
22 quickly to be able to consult with a full printout and
23 up-to-date printout of who has cast votes so that they only
24 have to call about a limited number of ballots to the county
25 office.

1 Why wouldn't that be an appropriate remedy in this
2 case given the introductions of a lot of new machinery that at
3 least as of this point has been shown from the last election --
4 serious election here in June have had a truly detrimental
5 impact on people being able to easily exercise their vote at
6 least in a number of population centers?

7 MR. TYSON: Your Honor, I think what you have
8 outlined is essentially what the State Election Board rules
9 require to happen. And I know for June 9, as an example -- I
10 represent Gwinnett County. And in the Gwinnett elections, they
11 were able to use all their emergency ballot supplies to open
12 precincts when there was late delivery of equipment.

13 So I think what you find is maybe a training issue
14 for poll workers, which I know that recruitment of poll workers
15 has been a very high priority for the Secretary and for county
16 election officials. I know there has been and there is
17 evidence in the record from Mr. Harvey about the extensive
18 updates to training of officials and poll workers on these
19 various points.

20 And since the State Election Board rules require
21 there be a paper backup, people can immediately begin checking
22 in. That is what is supposed to happen. That is what the
23 State Election Board rules require if the Poll Pads are not
24 working and if the BMDs are not working they should go right to
25 the emergency ballots or if the line is longer than 30 minutes.

1 Those are the existing regulatory structure that
2 needs to be implemented. And I know that there has been a very
3 conscious focus of state and county officials to make sure that
4 poll workers are ready and are trained on all of those points,
5 including those items.

6 THE COURT: Well, how are they checking people in if
7 they -- if the Poll Pads are not working --

8 MR. TYSON: Your Honor, they would --

9 THE COURT: -- under the State's rules? Because I
10 didn't hear that ever addressed other than what the plaintiffs
11 have suggested.

12 MR. TYSON: Yes, Your Honor. So the way the State
13 rule would work is you would immediately begin checking in
14 voters and the voters would be voters who were on the
15 precinct's list. There would be an indication on the list if
16 they have made an absentee ballot request up to the time that
17 the list is prepared.

18 But one of the challenges -- and I have never heard
19 the plaintiffs give a good answer to this question is -- if,
20 for example, the Poll Pads go down at noon and a voter who
21 voted at 8:00 A.M. comes back, the paper list is not going to
22 be updated for that fact.

23 So the remedy is you check everybody in and any sort
24 of alleged double voting that would take place can be handled
25 after the election through an election contest or some other

1 procedure. But that would be the way you would handle it.

2 And trying to -- the burden on the State that
3 Mr. Harvey talked about for doing this updated printing, it
4 really doesn't address the plaintiffs' concerns except if the
5 Poll Pads don't work right at opening.

6 THE COURT: Well, I think that there was the
7 alternative that he himself identified, which was not that the
8 State would print it but they would simply send basically an
9 electronic -- they would send it electronically to the county
10 for printing on that Saturday before the election. And he
11 seemed to think that was viable in my understanding of his
12 testimony.

13 MR. TYSON: And, Your Honor, I believe Mr. Harvey was
14 checking to see if that was technologically feasible using the
15 eNet system. I have not gotten an answer back on that point
16 yet. But that, I believe, was what he said, that it sounded
17 logical but he wasn't sure if it was an existing report that
18 was already created or we would have to get additional
19 programming done to generate that.

20 THE COURT: Okay. Well, I assume that there is a
21 straightforward answer then that you will be able to provide
22 today. I know you have been here with me. But I would like to
23 get the answer.

24 MR. TYSON: We'll do our best on that, Your Honor.

25 THE COURT: All right. And because, really, that

1 whole question of the -- what type of information is available
2 at the local polls, I think the plaintiffs are correct that we
3 have been discussing that really even from before December of
4 2019. And I have asked repeatedly, why is it not possible?
5 Can't you-all discuss it together? And it seemed like such an
6 important pragmatic step forward for dealing with -- we're
7 going to experience one of the largest crunches. And also
8 there is -- I mean, if you talk about confidence in the
9 election, clearly having a capacity to address such a crunch on
10 such a -- especially during a pandemic or really any time is an
11 important issue. And it is important for us to know if they
12 are capable of resolving it and that they don't care about my
13 ruling and want me not to be here.

14 Then I had a question about the State audit rule. I
15 understand the position of the State regarding, well, we are
16 doing something and this is a step forward and this is -- we're
17 using the State's position that there are disagreements in the
18 field as to how the audit should be done.

19 What I don't just factually understand is one of the
20 things that Dr. Adida says is basically if we -- if there seems
21 to be something funky about the data essentially, he says, and
22 it points to perhaps it not being reliable, well, we'll just
23 take some more -- we'll just keep on -- we'll get another batch
24 of ballots to look at until we can actually confirm.

25 Well, that is really part of what I was asking about

1 is the confirmation. Is this really simply going to be we're
2 going to get another group until we can say yes, it is.
3 Basically it is never, oh, there is a problem. It is always
4 we're going to get the amount until we can actually confirm
5 yes, the way I heard his testimony.

6 And I wanted to understand that. I wanted to
7 understand what the 90 percent confidence level was in this --
8 I think that is what is used in the rule. I don't have a
9 searchable copy of the rule.

10 So I can't -- I read it. Let's see. It is a
11 non-searchable version.

12 Anyway, do you want to respond? You probably know
13 what the confidence value is.

14 MR. TYSON: Yes, Your Honor. I'm trying to pull it
15 up myself as well here.

16 I think, Your Honor, one of the things that might be
17 helpful on this point -- I mean, the nature of a risk-limiting
18 audit is that the review of the ballot -- the paper ballot
19 continues to grow if you are not able to determine whether the
20 risk limit has been met all the way up to a full hand recount,
21 if necessary. I mean, that is kind of the way this ends is a
22 truly enforceable risk-limiting audit can get that far where we
23 have to go back and check every single -- every single
24 component.

25 And I believe our brief on the audit issue walked

1 through these issues in kind of great detail. So I would point
2 Your Honor --

3 THE COURT: All right.

4 MR. TYSON: -- to our brief on that point. But it is
5 because the nature of what ballot pulling risk-limiting audits
6 such that you are looking to see whatever that risk limit is
7 set at if you can achieve it based on the review of the paper
8 ballots that you have. If the answer is no, then you continue
9 counting -- hand counting up until a full manual recount of the
10 entire state, if necessary.

11 THE COURT: Well, as soon as you hit -- let's say it
12 is 90 percent, which is what I believed it was. As soon as you
13 hit 90, you stop? Or -- because it might be that at that point
14 if you added another 5000 you are back at 85 percent.

15 MR. TYSON: Yes, Your Honor. This is -- I found the
16 rule. It is ten percent. A risk limit of not greater than
17 ten percent.

18 And the way -- this, again, gets into statistics that
19 are far beyond my ability to comprehend them. And the Arlo
20 software that the Department of Homeland Security worked with
21 VotingWorks on in development does this kind of background
22 processing so you can determine based on the random sampling
23 that you have done whether or not you have reached that risk
24 limit or not.

25 And as Dr. Adida explained and actually I believe

1 Dr. Stark explained too in his supplemental declaration, you
2 recognize that that initial sample may not be quite right. But
3 like with pulling or other statistical processes, you can reach
4 a very high confidence level based on a subset of the entirety
5 of the ballots. And if you can't reach that, that is where you
6 continue growing your sample size as needed all the way.

7 THE COURT: Is there a reason why -- and I discussed
8 this particularly with Dr. Adida -- you never actually compare
9 the mark -- the barcode on a particular ballot with the
10 selections? You know, if there is a chance as we -- as we have
11 discussed before that the barcode mark is, in fact, imparting a
12 different number than the actual selections and that that is
13 one variation of malware that could occur or perhaps a
14 function, why wouldn't something as fundamental as that be
15 looked at on an individual ballot? Because we're not -- as he
16 testified, that is not part of the process.

17 MR. TYSON: And, Your Honor, I may be misremembering
18 Dr. Adida's testimony, but I thought that was part of the
19 process. Because when Mr. Rayburn explained the process in
20 March that the State was using, there was a pulling up of the
21 ballot. You were looking at both the audit mark, the human
22 readable portion. So the audit mark is the machine's
23 interpretation of what the QR code would be. And you were
24 determining from that if -- what is the human readable portion.
25 Are we counting that?

1 So I may be misrecalling the testimony on that point.
2 But that is my recollection on that, that that is part of the
3 review.

4 THE COURT: Well, I asked him specifically did he --
5 would you review the QR code again and see if it -- if it had
6 imparted other information. And he said no.

7 But we can all look at the transcript. I understand
8 what you are saying -- what Mr. Rayburn is saying. But that
9 was at -- it is a variation on this in light of also the work
10 that Dr. Halderman was doing to see with the QR codes.

11 MR. TYSON: Yes, Your Honor. I think they are not
12 going to rescan the ballots and see what the QR reading is.
13 That -- I mean, that may be what Dr. Adida is referring to.
14 But, anyway, I --

15 THE COURT: Well, he said he just -- we didn't need
16 to go back and look at that on an individual ballot basis. Of
17 course, he wasn't going to -- so that is what I'm getting at.
18 All right. Because that was specifically what I was asking
19 about is are you going to check the actual selections on
20 this -- on this ballot versus the QR code. And he said no.
21 And that was confounding to me as a matter of even for security
22 for -- I mean, people's sense of confidence. But maybe there
23 is some other explanation.

24 MR. TYSON: And, Your Honor, I know you had a
25 question earlier as well about tracking people who bring their

1 ballot back to the ballot marking devices to say that something
2 is not right about them. We were able to confirm with the
3 Secretary's office there is a spoiled and unaccompanied ballot
4 recap sheet that is collected with the information from
5 counties.

6 They don't report by machine, but they do report by
7 precinct and by ballot combination. So if you saw a particular
8 precinct and ballot combination where there was an extensive
9 number of errors, you could go back and work through and get
10 down to at least a grouping of machines from there.

11 THE COURT: Okay. Thank you. All right. Thank you
12 very much.

13 MR. TYSON: Thank you, Your Honor.

14 THE COURT: Mr. Cross?

15 MR. CROSS: Your Honor, yes. Before I start,
16 Ms. Cole, if she could pull up some slides that I'll reference.

17 If Your Honor wouldn't mind, I would appreciate a
18 little latitude on the time because there was a lot covered
19 there.

20 Ms. Cole, is it possible to go to slide view?

21 THE COURT: Is there something other than this first
22 screen?

23 MR. CROSS: This will work.

24 Ready, Your Honor?

25 THE COURT: Yes.

CLOSING ARGUMENT

MR. CROSS: Your Honor, the closing that Mr. Tyson gave is so far removed from the facts of this case it is hard to know where to begin. But let me just start with this notion that we only offer recycled theories and speculation.

We are the only ones who have examined the new BMD system who have knowledge it exists, that it is new, it is different, and it needs to be inspected. Only us. Not one election security expert has ever examined this system for the State. Not one endorses it. They could not find one to endorse this system.

On this issue of voter confidence, I will say this, Your Honor. For Mr. Tyson to say in the public portion of this hearing that we have shown no reason to doubt Georgia's system, when he knows what the State has concealed during the course of this hearing by their confidentiality objections, which we think are totally unmerited -- to say that to the people is at best misleading. And I will leave it at that.

The first slide, Your Honor, the entire defense that the State has offered collapses. They have said that there is no burden or only a slight burden on voters and they say for two reasons. This is in the opening. Voters have the opportunity to verify their ballots that are counted by the scanners. That is simply not true. It is not even disputed that that is untrue. You can't verify QR codes. And the

1 research their own expert put into the record showed that
2 voters are not adept at verifying ballots.

3 The second fact that they rely on or allegation is
4 that the ballots are then audited using a risk-limiting audit.
5 It is not disputed that that also is untrue. There is a single
6 audit for a single statewide election every other year.

7 So by their own argument, Your Honor, there is a
8 heavy burden on voters in this state.

9 Next slide. Ms. Cole, can you go to the next slide?
10 Sorry.

11 Just briefly on this, Your Honor, we started here.
12 They did not ask a single witness if this was true, that all
13 we're really asking for is to remove two pieces of equipment.
14 The most that we heard from any of their witnesses, Your Honor,
15 was, well, it may also involve some additional training. But
16 we know that is not accurate because they are already trained
17 on emergency paper ballots. It uses the same scanner.
18 Everything is the same from the moment they get the ballot.

19 And I'm going to jump ahead for time, Ms. Cole. If
20 you would just jump to slide three, if you would.

21 While she pulls that up, it is important to keep in
22 mind, Your Honor, that what we learned in the June 9 elections
23 is hand-marked paper ballots were used as emergency ballots
24 across the State.

25 The next slide, Ms. Cole. Sorry.

1 Cobb County, one of the biggest counties -- this is
2 one of the things we brought out during the course of the
3 hearing, Your Honor -- they had to use hand-marked paper
4 ballots across many precincts. This is from Ms. Eveler in an
5 email that we put into the record.

6 Your Honor is to think that the June 9 primary was
7 not a bigger disaster than it was because you had the foresight
8 a year ago to require an emergency backup plan. Without that,
9 the election on June 9 would have come to a halt at precinct
10 after precinct. Fortunately, the infrastructure is now there,
11 the people are trained, the paper ballots are there. All we're
12 asking for is just more ballots.

13 And, Your Honor -- Ms. Cole, if you would jump to
14 slide five. Next slide.

15 Mr. Barron himself took the stand and acknowledged
16 that at least as to election day having hand-marked paper
17 ballots would be simpler and easier. He practically asked Your
18 Honor to order it because the State won't allow him to do it.
19 And as the election director for the biggest county, if Fulton
20 can do this, there is no question that all the other counties
21 in the state, which deal with far fewer voters, can do it, Your
22 Honor, at least on election day.

23 Next slide.

24 And what did Mr. Harvey say about this? He said the
25 only thing he could come up with that would be tricky or

1 difficult is you would have to have a few stacks of paper
2 bigger than you normally have. Because instead of bringing out
3 paper ballots of ten percent of the anticipated vote, you would
4 have to have more. That is it. That is the only thing they
5 could come up with that they would have to do beyond what they
6 already do.

7 Next slide.

8 Their only other argument on this is to say, well,
9 maybe, kind of sort of we think we might not get enough
10 ballots. But we never asked anyone because we are really
11 scared that, of course, every ballot company in the dozens of
12 them across the country would, of course, commit to printing
13 these ballots. They don't ask the question because they know
14 the answer, Your Honor. There is no evidence of a ballot
15 shortage.

16 Next slide.

17 And they didn't tell Your Honor that the counties can
18 print the ballots themselves. Every county has at least one
19 printer. And some of them have many more, 200 to 250 ballot
20 printers on demand across the State that can print any ballot
21 style that they need.

22 So the point of feasibility, Your Honor -- their
23 entire argument is not supported by the facts, which is why
24 Mr. Tyson just does not address the facts in his closing.

25 Let me turn briefly to security, Your Honor.

1 Next slide.

2 Contrary to what Mr. Tyson said, there is, in fact,
3 an established, recognized standard in the election security
4 field for election technology like the system here.
5 Dr. Gilbert acknowledged it. It is called software
6 independence. You have to be able to determine whether your
7 system has been compromised in some way or simply isn't
8 operating right. If you cannot do that in a reliable way, then
9 it is not software independent.

10 Every expert who has examined this system -- our
11 experts -- said it is not software independent. Not one expert
12 from the defense said it is. Dr. Gilbert said it might be if
13 we assume that it is air gapped. And we're going to see that
14 it is not.

15 So here you have the State central defense that we
16 have heard time and time again. There is no evidence that the
17 old system was affected by -- infiltrates the new.

18 Next slide.

19 They even represented to Your Honor before that it
20 was air gapped. They were very precise about that. This is
21 State's defense counsel. But Dr. Coomer never said that or
22 anything close to air gapped. We now know --

23 Next slide.

24 -- that it is not even close to air gapped. This is
25 the same problem that we dealt with two years ago when

1 Mr. Barnes disclosed in a hearing that he was plugging a USB
2 drive into his internet-facing computer and then plugging it in
3 to the GEMS system.

4 Now they are telling people across the State --
5 Mr. Tyson did not characterize this email accurately. He said,
6 well, maybe it is one USB in one county. Look at what is being
7 asked for. The counties across the state, what are they
8 supposed to do for USB drives? Not just for L&A exports but
9 for election day exports. Just use the ones from the previous
10 system. They say, well, we don't really know what he means by
11 previous system. There is only one prior election system in
12 the state. And if Mr. Barnes had another explanation, we would
13 have seen an 11th hour declaration on that this morning too.
14 But we didn't. Everyone knows what this is about.

15 And it shows this system is just as compromised and
16 just as infected as the last one. And they like to tell Your
17 Honor there is no evidence of any hack on the old system. That
18 is just not true. Logan Lamb hacked it multiple times. Who
19 knows what else -- what anyone else was able to do with
20 nefarious intent.

21 The election director, Mr. Harvey, didn't even
22 mention any examination of this system. And the only thing
23 I'll say on this, Your Honor, because I haven't touched on it
24 is, Mr. Tyson asked Dr. Halderman if he agrees that well-run
25 organizations should constantly adjust to security threats.

1 Yes. That is the point of our case. What we have
2 learned is that in two years they have not done that at all.
3 Your Honor directed them last year to do that. They have not
4 done a single security assessment of this case, apart from one
5 they have withheld, which they said was only created for this
6 case. We have never seen it. No regular periodic -- not a
7 single assessment of this case in two years. And by
8 Mr. Tyson's own argument, that does not meet any kind of
9 professional standard for security.

10 THE COURT: You don't mean of this case? You mean of
11 the BMD system or the revision?

12 MR. CROSS: Yes. Thank you.

13 Next slide.

14 Just briefly, Your Honor, the only person they offer
15 who has actually looked at any part of this system is Mr. Cobb.
16 He is not an election security expert. He is not a security
17 expert at all. And every single thing he offered in his
18 original declaration to say the system is secure -- every
19 single allegation proved to be wrong, and he had to abandon
20 them.

21 He said you can rely on hash values. That was wrong.
22 Completely abandoned in his next declaration. He said keys
23 are -- barcodes are encrypted. Absolutely wrong. And
24 ultimately he was forced to admit in the last bit of testimony
25 here, Your Honor, that the time an election is happening when

1 we're underway the BMD system has everything it needs to
2 generate fake QR codes that no voter can detect. And then
3 nothing they have offered is going to detect when you have got
4 one audit for one election every other year.

5 Next slide.

6 Mr. Cobb also confirmed the simple attack that
7 someone can walk out with their ballot, as voters often do
8 because they are confused when the language says cast ballot
9 instead of print ballot -- but a nefarious actor could walk out
10 with it making many, many photocopies and distribute those
11 among people who have not yet come in to vote. And just
12 because the system will tabulate anything that is run through
13 it that has the QR code, it is easy to hack. This is stuffing
14 the ballot box.

15 Note the contradiction in their defense. They say,
16 well, you can't use hand-marked paper ballots because
17 someone -- insider they like to say -- so they are talking
18 about an election worker or someone at the state or county will
19 manipulate those.

20 Well, that same argument is why you can't rely on the
21 BMD system that they have offered up, Your Honor. The same
22 thing can happen. And the only defense they offer -- security
23 they offer for the equipment is to say, well, don't worry, we
24 have locked it down. Someone would have to come in and embed
25 malware. Someone would have to come in and embed the small

1 computer that Dr. Halderman developed.

2 But they are the ones that keep telling you you can't
3 trust insiders, that there can always be an insider that will
4 do that with hand-marked paper ballots.

5 And changing individual hand-marked paper ballots one
6 at a time, like they say, with a Sharpie, that is going to take
7 a whole lot more time than simply embedding a small computer in
8 a printer that no one sees or plugging a USB stick into a BMD
9 or an EMS server that then propagates across the system.

10 Next slide.

11 And we know that the system is not hardened. They
12 have no response as to why election computers and servers are
13 loaded up with video games that don't come standard that
14 someone decided to put on there. We are very far from a world
15 where this system is in any way secure.

16 Let me just close with audits, Your Honor. I think
17 Your Honor sees where we are going.

18 Next slide.

19 I think Your Honor hit the nail on the head on this.
20 This is from Mr. Tyson's opening statement. Mr. Tyson from the
21 start of this case acknowledged that audits are absolutely
22 irrelevant to the question that is before Your Honor right now.
23 They are not meaningful at all, which is the word Your Honor
24 used.

25 This is what he said, talking about the plaintiffs,

1 we cannot have an injury based on the outcome of an election,
2 as the Eleventh Circuit made clear in *Jacobson*, only their own
3 votes being counted. And why does that render RLAs entirely
4 irrelevant? Because every expert in this case agrees,
5 including Dr. Adida, that RLAs serve a singular purpose --

6 Next slide.

7 -- to validate election outcomes. That is it. That
8 is undisputed. So even if they had a robust RLA process across
9 the state -- and they don't. What they have -- it would be
10 laughable if we weren't talking about elections. All they can
11 do is tell you that the election outcome might be right. It
12 does not ever validate a vote. So they have nothing to offer
13 this Court in a network, an environment that is incredibly
14 compromised that is easy to hack and manipulate.

15 They have nothing to offer Your Honor to say we can
16 validate any individual vote. And Mr. Tyson was right from the
17 start of the trial. That is what this case is about. Not
18 election outcomes. So obviously if we can validate every
19 counted vote, then the election outcome flows from that. But
20 the injury that we're after is the one that Mr. Tyson
21 identified, election outcome -- RLAs are irrelevant to that.

22 I will just touch briefly on them because we spent so
23 much time.

24 Ms. Cole, if you would just jump to slide 19, the
25 second to last slide.

1 The two points on this, Your Honor. It is worth
2 noting --

3 Next slide.

4 -- none of their experts are willing to endorse or
5 even comment on the RLA process that has been adopted. They
6 told Your Honor in their brief that Dr. Adida's team helped
7 design the Georgia process. But when he was asked just a
8 singular question about that process, he said, I don't know
9 enough about the details of those plans to even comment on
10 them. The man who has supposedly designed it has so little
11 understanding of it he couldn't even comment on them.

12 Dr. Gilbert, whose original declaration last year
13 went on for pages about RLAs, now says I'm not going to offer
14 any opinions on RLAs in Georgia. Because what they have
15 adopted is so absurd that no self-respecting expert will even
16 go near it. That is where they have left themselves. No one
17 endorses this, just like the system.

18 Lastly, Your Honor, it cannot be overstated --

19 Next slide, Ms. Cole, if you would.

20 It cannot be overstated why RLAs, even in a reliable
21 system, simply cannot work with a BMD. This is Dr. Gilbert.
22 This is the Rice study that Dr. Gilbert himself offered up to
23 the Court from his own declaration. He represented to the
24 Court that the ability of voters to actually detect
25 manipulation of the voter choice is quite good. That is when

1 he said it is okay to rely on BMDs because they are good at
2 verifying their ballots. And he cites this Rice study in that
3 discussion in his declaration.

4 But what he did not tell Your Honor is that the 25
5 people that he references there were out of 108. He just
6 didn't disclose to the Court that the very study he cited is
7 contrary to what he represented. That what it showed was only
8 23 percent of voters were able to -- even made an attempt to
9 verify the ballots.

10 So in the world of BMDs, you are talking a very small
11 percentage of voters who can even try. And then among that
12 small quarter, a substantial portion of them were not good at
13 even detecting errors at all or maybe they detected one. In
14 fact, once we brought this out and he was asked about this
15 particular study, he said, I don't even want to be associated
16 with this study because it is not my work. This is the study
17 he directed Your Honor to in his written testimony in this
18 case.

19 Let me close with this, Your Honor. In 1954 in *Brown*
20 *vs. Board of Education*, the Court said, you cannot segregate
21 schools. A year later, states were back before the Supreme
22 Court saying this is really hard, dragging their feet, and
23 delaying the desegregation. The Supreme Court was quite clear.
24 This is a fundamental right. Do it with all deliberate speed.
25 That is what the Supreme Court said. Get it done with all

1 deliberate speed.

2 And they also said if you are going to come in
3 arguing that this is burdensome or difficult then the burden is
4 on you as the State. Because if you are going to tread on a
5 fundamental right like this or you are going to make
6 allegations of burden, then it is on you to prove those up.

7 And the same logic holds here, Your Honor. We
8 embrace our burden. But our burden -- our evidence cannot be
9 rebutted by simply Mr. Tyson or the other lawyers just making
10 claims, allegations for which they have no evidence, things
11 like, well, maybe we can't get printers or we can't get
12 ballots. Everything that they offer has no substantial
13 evidence behind it or any evidence.

14 And what we are asking Your Honor is as fundamental
15 as the right to education. It is more so. Because every right
16 starts with the right to vote, as the Supreme Court has
17 indicated.

18 So what we are asking for, Your Honor, is a system
19 that is the only system known today, particularly in the
20 environment in which the Georgia elections operate, in which
21 voters can have confidence. It is simple. It takes the
22 existing infrastructure, the existing training, and simply
23 rolls it out as they already are. They just need more ballots.
24 That is it.

25 Thank you.

1 THE COURT: Thank you. Well, let me ask you one or
2 two questions.

3 MR. CROSS: Yes.

4 THE COURT: Mr. Tyson accurately points out though at
5 a preliminary injunction hearing the plaintiffs bear a very
6 high substantial burden of proof and in this context to show
7 that their right to cast a vote has been burdened. And it is
8 not as you all say -- everyone says here it is not about
9 necessarily election outcome but about the burdening of the
10 vote and the exercise of it.

11 And it is also about in that connection that your
12 vote counts in the same way that anyone else's counts, that it
13 is -- that that is part of the equation. I might think that
14 some of the policies or regulations for handling of the
15 election processes by the State are inadequate in some way.
16 Some of them are perhaps very inadequate. Some of them
17 basically are still reflecting change that was -- never had
18 occurred before.

19 But -- and I might, you know, have a different policy
20 choice on all sorts of things. But why should I say at this
21 juncture -- what do you think is the most compelling point you
22 have that the plaintiffs have presented that the right to have
23 a vote cast and equally counted -- that individual voter has
24 been burdened impermissibly, with this high standard in mind?

25 MR. CROSS: To that I would say, Your Honor, that the

1 Supreme Court has been clear that burdening the vote unlawfully
2 includes eroding voter confidence. If voters cannot have
3 confidence in their vote, then that is a constitutional
4 deprivation.

5 With that standard in mind, I would say, Your Honor,
6 what we have presented is an environment specific to Georgia --
7 and let me be clear. Mr. Tyson has said before we're asking
8 Your Honor to invalidate BMDs across the country. Not so. Our
9 case is about Georgia. It is specific to the environment here.
10 We have --

11 THE COURT: What are you pointing to when you say
12 that it is enough to have invalidated confidence -- I mean, it
13 is certainly something -- all everyone here has been aware of
14 and concerned about perhaps, frankly, for everybody who cares
15 about our society and its health and well-being and future.

16 But tell me what case you are pointing to when you
17 say it is sufficient that they -- the way that they have
18 managed things have undermined voter confidence when they all
19 look to you and your clients as having undermined confidence --
20 voter confidence.

21 MR. CROSS: Let me make sure I understand Your
22 Honor's question.

23 THE COURT: Well, you, first of all, have said the
24 most important thing is that the State has -- in this
25 Georgia -- particular Georgia environment the State has

1 affected the right to vote because it has undermined voter
2 confidence because of the way they have handled the election
3 system. And I'm asking you what case do you rely on for that
4 proposition.

5 MR. CROSS: Oh, what case we rely on?

6 THE COURT: Yes.

7 MR. CROSS: I'm just going to pull that up, Your
8 Honor. It is the Supreme Court case that I referenced in my
9 opening.

10 MR. BROWN: That is *Saylor*.

11 MR. CROSS: Yes. Thank you.

12 I guess to get to your initial question, Your Honor,
13 that what is the most compelling evidence or fact, I would say,
14 one, you have Dr. Halderman's demonstration and then you have
15 that within an environment that has two pieces to it.

16 One, the recognized advanced persistent threats from
17 sophisticated nation states like Russia. So there is no
18 question that they are trying to get in. We now understand
19 they actually did get in in Florida, embed malware.

20 Then you have got the specific environment in Georgia
21 where they have not done any assessment -- any security
22 assessment in the state in two years, including with a
23 brand-new system.

24 And it is difficult to comprehend how you can roll
25 out a new system that has never been used on this -- on this

1 scale in any other state before and not bother to have a single
2 election security firm or expert come in and say, well, let us
3 just look at it, even on a cursory level, to see does it work
4 as it is supposed to. Is it hardened in the way that it needs
5 to be?

6 There is nothing I can imagine we would ever agree.
7 You wouldn't allow people to put vehicles on the road without
8 getting some sort of safety testing. We don't allow the state
9 to build bridges without some sort of safety testing. There is
10 nothing that we allow a government or private company to do
11 that has this kind of risk without not some basic safety and
12 security testing.

13 And they are asking voters to go to the polls without
14 ever having anyone look at it. And I said this before, but
15 there are only two possible explanations that I can come up
16 with. One is: They are as terrified as we are of what they
17 will find, which means they also don't have confidence in the
18 system as they claim, or they know how bad it is and they are
19 just turning -- they are keeping their heads in the sand, as
20 Your Honor told them two years ago not to do.

21 But that for me is the most powerful point, Your
22 Honor. We are beyond the dispute that the system is relatively
23 easy to compromise for the ones who are trying to compromise
24 it, very sophisticated actors. And no one has said -- no
25 one -- this system works and it is reliable.

1 I can't think of any other situation where we would
2 take something as fundamental as elections and say it is okay
3 to go forward under those circumstances. Just don't test it.
4 Nothing comes to mind.

5 THE COURT: Okay.

6 MR. BROWN: Your Honor, this is Bruce Brown. If I
7 may add one thought.

8 The confidence that we are looking for is not a false
9 confidence. It is not the confidence that will paper overrule
10 underlying deficiencies. It is true confidence. And today if
11 a voter votes on a BMD and then asks the State will you count
12 this correctly, if the State answered honestly, they would have
13 to say we have no idea. We will never be able to tell you if
14 we did or not. That is the --

15 THE COURT: Well, I'm sure Mr. Tyson would disagree.

16 MR. TYSON: Yes.

17 THE COURT: But thank you.

18 All right. Thank you, Counsel.

19 MR. CROSS: Thank you, Your Honor.

20 THE COURT: All right. Do we have your exhibits? We
21 don't have to do all of this publicly. Are there exhibits
22 that -- we don't have Mr. Martin here taking down if exhibits
23 have been admitted or not. And Ms. Cole has a job -- many
24 different roles.

25 But you haven't identified which exhibits have not

1 gotten in that you were trying to get in that I had a hold on.

2 MR. CROSS: Yes, Your Honor. I think there are a
3 few. We filed something last night. Let me just look at what
4 may still be outstanding.

5 THE COURT: Ladies and gentlemen, while counsel are
6 looking at this, I don't think we have any further substantive
7 proceedings here in terms of your observation. You are welcome
8 to stay while we are talking about exhibits. But no one will
9 be offended if you leave here.

10 I'm just trying to be -- and I appreciate that
11 everyone has been so engaged and interested. And I'll not be
12 announcing the decision today. These are challenging issues,
13 and they are challenging issues also in the context of under
14 governing law when there is an election so soon at this time.

15 But the reason I had this hearing is because I think
16 it is important that all circumstances be aired, whatever the
17 decision is, and -- and I'm -- frequently a federal district
18 court trial judge is not the final word on anything.

19 But I appreciate that there has been so much interest
20 in this. It is probably one of the more vital manifestations
21 of people engaged in democracy -- in the practice of it.

22 Thank you very much for attending and for your
23 interest. We're sorry again about the Zoom blast that happened
24 on Friday. And it is sort of the byproduct of still trying to
25 maintain an open society that things can go wrong like this.

1 And hopefully one day again we'll get to see you in open court.

2 Thank you.

3 MR. CROSS: Should we quickly touch on the exhibits,
4 Your Honor?

5 THE COURT: Yes.

6 MR. CROSS: The ones that I think that are not yet
7 moved or not yet admitted are PX 1, which is a Fayette County
8 ballot. I think, Bruce or Rob, that was one of you guys --

9 MR. BROWN: That was with -- with Mr. Gilbert as just
10 an example of a Fayette County ballot. I don't think there was
11 an objection to it.

12 MR. TYSON: No objection, Your Honor.

13 THE COURT: All right. It is admitted.

14 MR. CROSS: Then PX 9, this was the overview from
15 Dominion that Mr. Cobb quoted in his declaration for the QR
16 codes being encrypted. We only pulled up the cover publicly
17 because it is designated confidential. But we would move the
18 entire document in so Your Honor has it.

19 MR. McGUIRE: This is one that Mr. Skoglund talked
20 about as well.

21 MR. TYSON: No objection as long as the document
22 itself stays under seal. The cover page is fine.

23 MR. CROSS: Then the last two, Your Honor,
24 Plaintiffs' Exhibit --

25 THE COURT: All right.

1 MR. CROSS: I'm sorry.

2 THE COURT: What is being admitted on PX 9 -- I'm
3 sorry -- that you-all agree on?

4 MR. CROSS: The cover page can be made publicly
5 available. But the State wants the rest under seal.

6 THE COURT: All right.

7 MR. CROSS: The last two, PX 53, that was an
8 emergency ballot with some hand-marking. I think, Bruce or
9 Rob, one of you guys put that up.

10 THE COURT: Any objection?

11 MR. TYSON: No objection, Your Honor. I think that
12 is the ballot procedure from that Secure the Vote document.
13 But that is fine. No objection.

14 MR. CROSS: Thank you, Bryan. I think that is right.

15 THE COURT: Right. It is admitted.

16 MR. CROSS: Last one, PX 56, this is another Dominion
17 document where again we only put up the cover. Rob, I think
18 you had this one.

19 MR. McGUIRE: 56?

20 MR. CROSS: There were two Dominion documents that we
21 put the cover up on. One was the overview Mr. Cobb quoted, and
22 then there was another one.

23 MR. McGUIRE: I don't -- Bruce, I don't know if you
24 used 56. I don't think 56 was one of mine. We used 54.

25 THE COURT: Was 54 admitted?

1 MR. MCGUIRE: I believe it was.

2 MR. CROSS: Yes, 54 was admitted.

3 THE COURT: Well, like, for instance, 53 is admitted
4 or the cover page in PX 9 -- you are going to have the rest of
5 it be under seal?

6 MR. TYSON: Yes, Your Honor.

7 THE COURT: All right. Okay. Fine.

8 All right. Well, if you figure out about 56, you can
9 let us know.

10 Mr. Tyson, (unintelligible) --

11 MR. TYSON: I'm sorry, Your Honor. You broke up.

12 THE COURT: Are there any of the defendants' exhibits
13 that need to still be admitted?

14 MR. TYSON: I believe we had Exhibit 11, which was
15 the hand recount story, and there was an Exhibit 12 that was
16 the stills from the video that we'll file under seal.

17 THE COURT: Right. What is the hand recount story?

18 MR. TYSON: From Savannah where the state house -- I
19 talked to Dr. Halderman about it. The hand recount of the
20 state house election.

21 THE COURT: I have to review that before I let it in.
22 It is a newspaper article. After all, you were objecting to
23 also even just actual academic studies coming in. You can
24 examine somebody without having an article come in itself.

25 So I'm not inclined to. But I will look at it if you

1 want.

2 Holly, do you know which one that is?

3 What was the exhibit again, Mr. Tyson? And I will
4 look at it.

5 MR. TYSON: It is filed at 893-2.

6 THE COURT: All right. I'll look at it afterwards,
7 and I will let you-all know. But I'm not inclined to admit it.

8 MR. McGUIRE: Your Honor, we used DX 4. I'm not sure
9 if that was admitted or not. But we would --

10 THE COURT: What was DX 4?

11 MR. McGUIRE: It was the -- Michael Barnes' draft
12 document on scanner settings.

13 THE COURT: Are you seeking to admit it?

14 MR. McGUIRE: If it isn't already admitted, we would
15 seek to admit it, yes.

16 MR. TYSON: We don't have an objection to that, Your
17 Honor.

18 THE COURT: All right. Admitted.

19 MR. McGUIRE: We had also submitted 61 -- PX 61 and
20 PX 62. Those are the articles that Mr. Tyson was just
21 referring to, I believe.

22 THE COURT: All right. I'll look at those. The one
23 I was referring to?

24 MR. McGUIRE: Yes, ma'am, you were referring to.

25 THE COURT: Well, I'll look at all three articles,

1 and I'll let you-all know.

2 MR. TYSON: Then, Your Honor, also those stills from
3 the inspection video under seal but --

4 THE COURT: All right. You were going to get back to
5 me this afternoon about the question I posed to you; right?

6 MR. TYSON: Your Honor, I have already sent it to the
7 Secretary's office. So they are working on it right now.

8 THE COURT: All right. Thank you very much. I know
9 it has been a lot of work for you-all. I appreciate the
10 excellent really work you have done and your advocacy and the
11 strength of your beliefs on all sides and commitment to your
12 clients.

13 And if we have any questions, I will let you know.
14 It has been a challenging thing to do this by Zoom. And I very
15 much appreciate everyone's professionalism as we have tried to
16 navigate together over the last period of time, in the
17 particular last few days.

18 Is there anything else we should address at this
19 time?

20 MR. CROSS: Your Honor, I think we may have figured
21 out the exhibit, just while we have got you. So Exhibit 56 --
22 I think I have it confused. My apologies.

23 Exhibit 56 is the November 2019 Democracy Suite
24 system overview. I think that is the one we used and the one
25 that Mr. Cobb quoted from. Exhibit 9 is -- let me pull it up

1 now. That is the Windows build document.

2 MR. McGUIRE: That one is admitted, I think.

3 MR. CROSS: Right. That was the one that --

4 THE COURT: You are looking to admit the
5 November 2nd, 2016, documentation that Mr. Cobb relied on?

6 MR. CROSS: Yes. It is 2019. But that is right.
7 Again, it would only be the cover page because it is designated
8 confidential. So Exhibit 56, the cover page could be public
9 but the rest would be under seal, according to the State.

10 THE COURT: So let me ask you this just in terms of
11 the -- did you give them to us as two separate documents all
12 the times that you are saying just the cover page or are we
13 supposed to be scanning it ourselves to make these? How do you
14 perceive this happening pragmatically.

15 MR. CROSS: We, I think, have publicly filed all of
16 the exhibits. And for Exhibit 9 and 56, we filed just the
17 cover sheet.

18 THE COURT: All right.

19 MR. CROSS: I'll confirm that.

20 THE COURT: Everything else under seal?

21 MR. CROSS: Then the rest would be under seal with
22 the Clerk.

23 THE COURT: All right. Were they filed under seal
24 before?

25 MR. CROSS: No. We will put in a sealed filing for

1 those. I don't think we have done that yet.

2 THE COURT: Is that okay with you, Mr. Tyson, and is
3 there anything that you were submitting that was sealed?

4 MR. TYSON: That is fine with us, Your Honor. I
5 think the one we have under seal is the Exhibit 12. So I will
6 file that under seal here shortly.

7 THE COURT: All right. Ms. Cole, is there anything
8 else that you can spot or think of?

9 LAW CLERK COLE: No.

10 MR. CROSS: Your Honor, I guess one other question.
11 To Mr. Brown's point at the start of the day that the
12 plaintiffs will move to unseal this, we don't want to distract
13 from the far more pressing point that Your Honor needs to make
14 a decision on the motion.

15 What is your preference of timing and how we would do
16 that? We do think it is --

17 Go ahead.

18 THE COURT: I don't have a preference. I have to
19 deal with what you-all have put in front of me.

20 MR. CROSS: Right.

21 THE COURT: And I have -- you know as with -- well, I
22 don't know. I think Mr. Tyson must be dealing with elections
23 full time and nothing else and his colleagues. But I do have
24 plenty of work that is not elections that I have got to get to.

25 So, you know, I realize on a time-sensitive basis you

1 want me to rule on that. So, you know, you just will have
2 to -- obviously proceed as soon as you can. But I can't tell
3 you that I'm going to be able to rule on it that much faster.
4 I mean, I'm happy to give you-all a shorter period of time
5 because you want to deal with it. But I can't predict exactly
6 when I will be able to turn it around.

7 MR. CROSS: Understood.

8 MR. BROWN: Thank you, Your Honor.

9 THE COURT: Yes? Mr. Brown, were you saying
10 something?

11 MR. BROWN: No. I just said thanks.

12 THE COURT: I think that is probably -- there is a
13 lot that the State has to deal with -- State counsel. So I
14 think the better thing is to file it ASAP and then I just won't
15 grant an extension and they can have their 14 days. That seems
16 to me the more sensible way of proceeding, since everyone is
17 under enormous pressure just to get this hearing happening.

18 MR. CROSS: Thank you, Your Honor.

19 MR. TYSON: Your Honor, also we just want to say on
20 behalf of all of us on both sides thank you to Ms. Welch and
21 Ms. Cole for heroic work in this. Thank you.

22 THE COURT: They were terrific.

23 All right. If I have any other questions, I will let
24 you-all know. Thank you also. Be well.

25 MR. CROSS: Thank you, Your Honor.

1 MR. TYSON: Thank you, Your Honor.

2 MR. BROWN: Thank you.

3 THE COURT: All right. Take care. Bye-bye.

4 **(The proceedings were thereby concluded at 3:25**
5 **P.M.)**

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 198 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 15th day of September, 2020.

Shannon R. Welch

SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT